

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 83 of 2015

Date of Decision: 02.05.2023

Shri. Abal M. Sangma Vs. State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. M.F. Qureshi, Adv.

For the Respondent(s) : Mr. A. Kumar, AG with
Mr. S. Sengupta, Addl. Sr. GA

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| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

JUDGMENT AND ORDER

1. As is expected in the midst of a heightened atmosphere of insurgency and militant activities which the State has witnessed in the 90s and early 20s where extortion and kidnapping and killing frequently took place, it is but natural for the police force to be ever vigilant and every piece of information of either militant activities or the like would be responded immediately.

2. In this backdrop, the police force would conduct or undertake anti-insurgency operations on receipt of credible or even unconfirmed reports of presence of militants in places within the State to arrest such activities or to bring the culprits to book.

3. The subject matter which is confined to the issues raised in this instant petition as could be understood emanates from receipt of information from an alleged reliable source, by the police in West Garo Hills District who is said to have been informed about the presence of three hardcore members of the banned Garo National Liberation Army (GNLA), a militant outfit operating mostly within the Garo Hills District of the State and which suspects were said to have taken shelter in a village called Romba Adinggre under Rongram Police Outpost.

4. The alleged militants were said to be involved in extortion by serving demand notes to well-known business persons and to government officials and to have also indulged in kidnapping for ransom with the main purpose being waging war against the State as a whole.

5. As mentioned above, on receipt of the said information, Inspector B.N. Marak who is the Circle Inspector (Sadar), Tura Police Station along with Sub Inspector B.A. Bamon, In-charge, Rongram Outpost and available SOT/SWAT/Bn personnel left for the said village on 04.03.2015 at around

3:30 am and the search operation started at about 5:00 am.

6. An account of what happened thereafter given from the side of the police is that the search operation started from 5:00 am wherein one house after another was searched. In the process, the operation party spotted one house near the Romba Adinggre L.P. School where the suspected militants are said to be present. The police shouted at them several times to lay down their arms and to surrender, however, suddenly the suspected militants started firing upon the police party with their weapons and tried to run towards the nearby jungle. The operation party in self defence retaliated and in the exchange of fire one suspected militant, later identified as Sengbath Ch. Marak, who was seen running towards the jungle along with two others was hit and died on the spot.

7. After the said encounter, a search was conducted by the police in the presence of a Magistrate and from where the deceased Sengbath Ch. Marak was found lying dead, one number of 7.66 mm pistol with two numbers of live ammunitions was found. On search being conducted at the house where the deceased was staying, one detonator stick, one mobile handset with two numbers of SIM card and incriminating documents related to GNLA activities including two numbers of demand notes were also found.

8. In this connection, an FIR was lodged by Inspector B.N. Marak before the Incharge Rongram Outpost, West Garo Hills District detailing the sequence of events which occurred at Romba Adinggre village on 04.03.2015, particularly mentioning the death of the said suspected militant, Sengbath Ch. Marak. The case was registered as Tura P.S. Case No. 50(3) of 2015 under Sections 120/120(B)/121(A)/122/123/353/307 IPC read with Sections 25(1-A) (1-B) Arms Act and Sections 16/17/18/20 of the Unlawful Activities (Prevention) Act and investigation was launched.

9. It may be mentioned that in due course, the investigation of the said case has been transferred to the CID under the authority of the then Director General of Police vide his order dated 19.03.2015.

10. In course of these proceedings the respondents have submitted a status report of the Tura P.S. Case No. 50(3) 2015 which report was submitted by the Superintendent of Police, West Garo Hills, Tura on 28.03.2023 in which is annexed an order dated 24.04.2018 passed by the learned Chief Judicial Magistrate, West Garo Hills District indicating that the final report filed by the Investigating Officer (IO) was not objected to by the complainant and accordingly the said Tura P.S. Case No. 50(3) 2015 was disposed of.

11. In the meantime, since the case being a case of death on account

of an encounter with the police, accordingly a Magisterial Enquiry was directed to be conducted by a Magistrate on the strength of the order of the District Magistrate vide Memo No. CB. 23/15/3-A dated Tura the 07.03.2015. The Additional District Magistrate who had conducted the said enquiry has forwarded his report and findings to the Deputy, West Garo Hills District vide his forwarding letter dated 29.05.2015. This enquiry report was produced before this Court by way of an additional affidavit filed by the respondent on 29.06.2015.

12. This Court in its order dated 28.06.2017 after hearing the parties from both sides have noted the submission of the learned Addl. Sr. Government Advocate that the enquiry report filed by the Additional District Magistrate, West Garo Hills is not found acceptable to the State. Accordingly, this Court vide an order on the same date has directed that a further enquiry by the learned District Judge, West Garo Hills, Tura be conducted.

13. The learned District & Sessions Judge apparently on receipt of the direction has embarked on the task of conducting a fresh enquiry into the incident which took place on 04.03.2015 at Romba Adinggre village, West Garo Hills and has filed his report, which report along with all related documents etc. have been produced before this Court for perusal.

14. In the meantime, the petitioner herein who is also the father of the deceased Sengbath Ch. Marak has also lodged an FIR before the In-charge, Rongram Outpost which FIR was received by the said In-charge on 10.03.2015. In the said FIR, the informant/petitioner has informed the police that his deceased son was shot dead by one Mingran T. Sangma and other police personnel in the presence of the Circle Inspector, West Garo Hills, Shri. Bitching N. Marak. The allegation is also that the police personnel had thrown stones at the house of Sengbath and asked him to come out and that they also fired in the air after which Sengbath came out and Mingran T. Sangma shot at his leg and made him run and then shot him again. The incident was witnessed by Shri. Samson A. Sangma and Allone M. Sangma.

15. The said FIR was also taken up and registered as Tura P.S. Case No. 53(3) 2015 under Section 304(A) IPC. The investigation in this case too has been handed over to the CID by the Director General of Police vide his order dated 19.03.2015.

16. Mr. M.F. Qureshi, learned counsel for the petitioner has submitted that the manner in which the deceased son of the petitioner was killed in the alleged police encounter is violative of the fundamental right of Right to Life guaranteed under Article 21 of the Constitution of India.

17. The learned counsel has submitted that according to the version of the petitioner, his deceased son Sengbath Ch. Marak aged about 33 years who was residing at Romba Adinggre village was confronted by a team of Meghalaya Police personnel on 04.03.2015. The police party came near his house and threw stones on the roof, calling out to those inside the house to come out. The petitioner's son came out of the house to extend cooperation to the police but, on seeing him one police personnel by the name of Shri. Mingran T. Sangma shot at his leg and thereafter he was forced to run and, in the process, he was shot by the police personnel who sprayed several rounds of bullets in his body. This act was witness by some people who were present at the spot.

18. The learned counsel has also submitted that the incident which took place that fateful day was totally a fake encounter wherein the police in a most negligent and deliberate manner had shot the son of the petitioner who was neither armed nor had exchanged fire with the police. The allegation that a country made firearm was recovered from the spot where the deceased son of the petitioner was shot dead is also a false allegation when in fact the said firearm was planted by the police after the incident.

19. It was also submitted that the stand taken by the respondents that the police has only exercised the right of private defence as could be

understood under Section 96 of the Indian Penal Code is not plausible at all, judging from the sequence of events which took place on the date of the incident at the place of occurrence.

20. From the FIR filed by the Circle Inspector, Tura Police Station, what is seen is that the narration of the incident which occurred that day speaks of an exchange of fire between the police and one unknown person, who was later identified as Sengbath Ch. Marak, who was warned several times to lay down arms and to surrender, but the militants instead opened fire upon the police party who retaliated in self defence and in the melee, the deceased who was running along with others towards the jungle was hit by bullets as a consequence of the firing and died on the spot. There was no attempt to apprehend the said deceased but without following due procedure, the police had shot dead the deceased son of the petitioner, submits the learned counsel.

21. Referring to the Magisterial Enquiry Report submitted by the Additional District Magistrate as well as the Enquiry Report filed by the District and Sessions Judge, Tura, the learned counsel for the petitioner has submitted that the Magistrate had examined about 30 witnesses and the District and Sessions Judge had also examined an equal number of witnesses, both sets of witnesses are the same persons except that the

District Judge had examined two fresh witnesses and has also left out two witnesses who were earlier examined by the Magistrate.

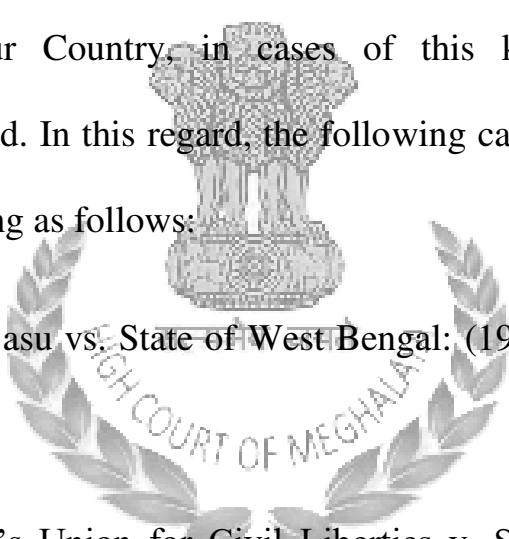
22. In both the two sets of reports, the statements of the eye-witnesses Shri. Samson A.Sangma, Shri. Allone M.Sangma, Shri. Krengstone Ch. Marak, Shri. Sunit Ch. Marak and Smti. Jeitha M.Sangma in their depositions had given the same version in both the Enquiries, maintaining that the deceased son of the petitioner was killed by the police who has forced him to run and who was then shot in the leg and even as he had fallen down, the police kept on firing till he died. Therefore, the police had never acted in self-defense, submits the learned counsel.

23. Again, the learned counsel has submitted that the police after shooting down the deceased son of the petitioner had carried out the inquest on the dead body and has also conducted the post-mortem, however the guidelines and procedure to be followed in cases of death which occurred as a result of police firing, as framed by the National Human Rights Commission (NHRC) was never followed or complied with.

24. That the FIR filed by the Police through Shri. B.N. Marak, Circle Inspector ended in the Final Report closing the investigation on the ground of lack of evidence as well as the investigation conducted on the case registered as a consequence of the FIR filed by the petitioner, which was

also closed by filing of the Final Report would only goes to show that the police are reluctant to admit their complicity in the act of killing the deceased son of the petitioner in cold blood without giving him the chance to surrender and as such, the matter is a fit case for re-investigation by the CBI to bring the actual culprits to book, further submits the learned counsel.

25. On the issue of claim for compensation, the learned counsel for the petitioner has submitted that in a catena of decisions, particularly by the Apex Court of our Country, in cases of this kind, the claim for compensation is valid. In this regard, the following cases were cited by the learned counsel, being as follows:

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- i. D.K. Basu vs. State of West Bengal: (1997) 1 SCC 416, para 44;
 - ii. People's Union for Civil Liberties v. State of Maharashtra: (2014) 10 SCC 635, para 31;
 - iii. Sanjay Gupta v. State of U.P.: (2022) 7 SCC 2-3, paras 16 and 22;
 - iv. Rohtash Kumar v. State of Haryana: (2013) 14 SCC 290 at para 16;
 - v. Anita Thakur & Ors. v. State of J&K: (2016) 15 SCC 525,

para 18;

26. Countering the argument advanced by the learned counsel for the petitioner, the learned Advocate General speaking for the State respondent has submitted that the assertion of the petitioner in his petition that his deceased son died as a result of police firing in a fake encounter was made without any basis dehors the factual matrix as could be ascertained from the materials on record.

27. The learned AG has further submitted that it may be appreciated that at the relevant period of time, the State was under the throes of militancy and insurgency which has upset the peace and tranquility of the citizenry. It is in this tense atmosphere that any information on the presence of militants would be reacted to immediately.

28. As to the incident involving the deceased son of the petitioner, the police on receipt of reliable information had proceeded to the place of occurrence at about 3:00 am on the said date, that is, 04.03.2015. On reaching the vicinity of the house of the deceased, the police party had issued adequate warning calling upon the occupants of the said house to come out, but instead of coming out peacefully, three persons emerged from the house, firing at the police party upon which the police retaliated by opening fire upon the suspected militants resulting in the unfortunate death

of the deceased son of the petitioner while two other persons escaped by running towards the nearby jungle.

29. The learned AG has then referred to the FIR filed by the petitioner and has submitted that what was portrayed therein is not the actual picture of what had happened inasmuch as the petitioner has alleged that his son was shot in the leg by one Shri. Mingran T. Sangma in the presence of Circle Inspector Shri. B.N. Marak and that he was not armed with any firearm, cannot be substantiated by verifiable evidence as the encounter took place at about 3.00 am in the dark of the night, the petitioner cannot be expected to know who the person who shot his son was.

30. Maintaining that the sequence of events which took place on the date of occurrence in the light of the allegations of the petitioner that the whole exercise has the ingredients of a fake encounter, the learned AG has submitted that the petitioner has not been able to provide reliable proof to substantiate his claim. The allegation that the deceased was not carrying or using firearms to counter the police use of firearms is belied by the fact that forensic reports has ascertained that there was gunpowder residue in the person of the deceased coupled with the fact that a country made firearm was found lying beside the dead body of the deceased son of the petitioner which can only point to one fact, that is, that the deceased was using a

firearm against the police party as a result of which there was a return fire, even to the extent of firing of 97 rounds, which again was due to the fact that the police are not sure as to how many militants were present at the said place.

31. The claim for compensation made by the petitioner is based primarily on the ground that the whole incident has the marks of a fake encounter, but as submitted, it has been established that it was not a case of fake encounter but a genuine encounter with the militants where the police party have risked their lives in the face of counter firing from the side of the militants, including the deceased son of the petitioner, submits the learned AG.

32. As far as justification of the right of private defence set up by the police party, the learned AG has submitted that the petitioner has referred to the provision of Section 99 of the Indian Penal Code to say that the action of the police party was not in self defence as the deceased son of the petitioner was without arms at the relevant time and as such, shooting him when there is no reasonable cause of apprehension of death or of grievous injury on the part of the police party is not justifiable by law, is contrary to the factual circumstances wherein it was clearly evident that the deceased son of the petitioner was in possession of a country made firearm and he

was also exchanging fire with the police party, had the bullets from the said firearm hit the members of the police party, it cannot be said that there can be no possible injury or even death and as such, the provision of Section 99 IPC is not attracted to the case of the parties herein.

33. The learned AG has also pointed out that since the incident involved a case of unnatural death, in this case, a case of death by police firing, therefore, a Magisterial Enquiry was instituted and accordingly, the learned Magistrate has conducted the Enquiry and has submitted the report, in effect, exonerating the police action. Furthermore, on the learned counsel for the State not being satisfied with the report of the Magistrate, this Court vide Order dated 28.06.2017, has directed for fresh enquiry by the learned District and Sessions Judge, West Garo Hills, Tura. The learned District and Sessions Judge on conclusion of his enquiry which included recording of statement of about 30 witnesses, has filed his report, again coming to the conclusion that the police retaliated against the firing of the deceased son of the petitioner in self defence. The petitioner has not made any objection to the said Report and as such, is now prevented from raising any objection against the said report at this point of time.

34. As to the Magisterial Enquiry and the report thereof, the learned AG has submitted that the learned Magistrate has meticulously proceeded

with the enquiry and all relevant witnesses have been examined, the report is thus comprehensive. However, it is submitted that the scope of the Magisterial Enquiry is circumscribed within the provision of Section 176 Cr.P.C which empowers the Magistrate to enquire into the cause of death, but as to who has caused the death and in what manner the death was caused, the same is not within the ambit and scope provided under Section 176 Cr.P.C. In connection with this aspect, the case of *Manoj Kumar Sharma & Ors. V. State of Chhatisgarh & Anr.:* (2016) 9 SCC 1, para 19 was cited wherein the Hon'ble Supreme Court while explaining the scope of enquiry under Section 174 Cr.P.C has clearly indicated that the scope of the said provision is very limited, which is confined only to an enquiry by a Magistrate who, while conducting the inquest is only to ascertain the apparent cause of death, but is not qualified to go into details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted.

35. It is the further contention of the respondents that from the contents of the Magisterial Enquiry Report and even the report of the enquiry conducted by the learned District and Sessions Judge, what is evident is that the petitioner was not an eye witness to the encounter but had appeared on the scene after the firing was over and as such, could not have been in a position to say that the said encounter was a fake encounter.

Therefore, from the version of the petitioner as found from the records, including the averments made in this petition and the FIR lodged by the petitioner and also from the information given by the informant, Inspector B.N. Marak who has filed the FIR first in point of time, there is a dispute in the factual presentation of the parties and under such circumstances, it would not be appropriate for the High Court to entertain a writ petition under Article 226 of the Constitution of India. The case of *Chairman, Grid Corporation of Orissa Ltd. & Ors. v. Smti. Sukamani Das & Anr.* reported in (1999) 7 SCC 298 at para 6 as well as the case of *Tamil Nadu Electricity Board v. Sumathi & Anr.*: (2000) 4 SCC 543 at para 10 was referred to by the learned AG in this connection, wherein the Apex Court has held that where disputed question of facts are involved, a petition under Article 226 of the Constitution is not the remedy and again, in the case of *Tamil Nadu Electricity Board* it was held that High Court does not interfere when an equally efficacious alternative remedy is available.

36. On the prayer for award of compensation, the learned AG has submitted that before exemplary damages can be awarded, it must be shown that the fundamental rights of the petitioner under Article 21 of the Constitution has been infringed by arbitrary or capricious action on the part of the public functionaries (police). The case of *Nilbati Behera v. State of Orissa & Ors.* (1993) 2 SCC 746 at para 35 wherein this proposition was

found present, has been cited by the learned AG in this regard.

37. On the demand of the petitioner for transfer of the investigation into the death of the son of the petitioner to the Central Bureau of Investigation (CBI), the learned AG has submitted that though the High Court has sufficient power to make such a direction however it cannot pass a routine order merely because a party has made certain allegations. To buttress this point, the learned AG has cited the case of *Secretary, Minor Irrigation & Rural Engineering Services, UP & Ors. v. Sahngoo Ram Arya & Anr.*: (2002) 5 SCC 521 paras 5 and 6 and also the case of *West Bengal v. Committee for Protection of Democratic Rights, West Bengal*: (2010) 3 SCC 571 para 70, where a reading of the paragraphs cited would show that the Supreme Court has not laid down the law that the High Court is prohibited from issuance of a direction for an enquiry by the CBI in exercise of its powers under Article 226, however the same is to be exercised only if sufficient materials is available from the records, including the pleadings which disclose a *prima facie* case calling for such investigation.

38. In the light of the submission made, the learned AG has maintained that the petition filed is devoid of merits and the same is liable to be dismissed.

39. This Court, upon hearing the parties, has perused the materials on

record which includes the petition and the affidavit-in-opposition filed by the respondents as well as the Enquiry Report conducted by the Additional District Magistrate, West Garo Hills, Tura filed on 29.05.2015, which report was disproved by the State respondents upon which this Court vide order dated 28.06.2017 has directed the learned District and Sessions Judge, Tura to conduct an independent enquiry and which enquiry report was also placed by the learned District and Sessions Judge before this Court being duly acknowledged and brought on record vide order dated 21.03.2018.

40. The facts of the case need not be reiterated as the same has been spelt out by the parties in course of their submission before this Court. As to the occurrence which took place on 04.03.2015, there is no dispute that a police encounter had taken place where there was firing from the side of the police party resulting in the ultimate death of the son of the petitioner who was the evident target of the whole operation.

41. As to whether the said encounter can be termed to be a fake encounter or a genuine encounter, presumably on the assertion of the respondents that the police party had only acted in self defence in retaliation to the firing on the part of the deceased son of the petitioner and his two companions, the same can only be unearthed from the materials on record.

42. There are two opposing stands taken by the respective parties herein, one relying on the evidence adduced by a set of witnesses who, in

their deposition in the enquiry conducted by the learned District and Sessions Judge have asserted that the whole operation was carried out by the police with the sole intention to eliminate the deceased son of the petitioner and another set of witnesses consisting mostly of police personnel who have also asserted that the encounter was in self defence since the deceased son of the petitioner had come out of the house he was living, firing at the police party by the use of a country-made firearm.

43. From the evidence recorded by the learned District and Sessions Judge, it is noted that about two or three witnesses, namely, EW2 Shri. Samson A. Sangma, EW3 Shri. Allone M. Sangma and EW11 Smti. Jenitha M. Sangma have given an account to the effect that the police on reaching the place of occurrence had called out to the deceased son of the petitioner to come out of the house he was in, upon which after he came out, he was told to run and when he ran in the direction of the house of EW11, the police started firing and even when he fell down, they continued firing at him.

44. Another set of witnesses, who are mostly the members of the police party who took part in the said operation, in their evidence have given a different version of what transpired on that fateful day inasmuch as EW13, Shri. Bitching N. Marak, who was the Circle Inspector for Tura Police Station, in his deposition has stated that on receipt of credible

information about the presence of some GNLA activist, the police party had proceeded from Rongram Outpost at about 3:30 am and on reaching Romba Adinggre village at about 5:00 am in the morning, they identified the house where the suspected militants were hiding and they cordoned off the house in a semi-circle and warned the occupants to wake up and surrender before the police. Suddenly, three miscreants who were inside the house broke open the front door and started firing at them and were running to the back side of the house which is a slopping area and in self defence, the police retaliated. This witness has also stated that since it was still dark, they could not make out who among the three were carrying a gun and seeing the miscreants running down the slope towards the stream which is about 30-35 meters from the house, the police party found one person lying injured from bullet wounds received and the other two, managed to escape towards the thick jungle nearby. The evidence of EW13 was corroborated by EW14 Shri. Binod Alvin Bamon, the Incharge of Rongram Outpost, EW15 Shri. Martin Ch. Marak, EW16, Shri Lemitson M. Marak, both police constable as well as other police personnel examined.

45. What is also noticed is that from the evidence of the said police personnel, it is said that after the firing was over and when the deceased son of the petitioner was found near the stream, he had already received a number of gun shots and was found dead. About one or two meters from the

body was found a small country-made firearm. EW13 has stated that after the encounter, the Superintendent of Police informed the Magistrate, who along with other Officers came to the place of occurrence and who has also conducted the inquest.

46. This Magistrate, being EW27, Labenn Ch. Marak, who is also the Block Development Officer (BDO), Rongram reached the PO at about 10:00 to 11:00 am on the same day and along with I/C Bamon and other police personnel entered the house, the door which is made of bamboo was not broken and inside the room, some bottles of foreign liquor was found as well as some papers and part of a detonator were also found. This witness has also noted that at the spot where the deceased son of the petitioner was found lying face down, there was a slope below the house of the deceased and indications of a person who might have tumbled or skidded through the slope, such skid mark or slip mark showing signs of only a single person running towards the place where the deceased was lying. When he checked the body, he found many entry wounds as well as gracing bullet wound on the body of the deceased, the maximum target and wounds on the body being at the back and buttock area. This witness also saw one old pistol which appears to be a country-made pistol with a jammed magazine just about a few meters from the body of the deceased. I/C Bamon picked up the pistol from the shallow water of a nearby stream and checked it in front of

him. He tried to take out the magazine, but could not do it, as it was very hard to take it out and he has to use stone to remove the magazine. There were two bullets in the magazine and the pistol seems rusted.

47. While appreciating the evidence of the witnesses and also the Forensic Science Laboratory Report, the learned District and Sessions Judge has relied on the said FSL Report that the country made pistol is found serviceable and the gun powder residue which was detected in the liquid in a plastic container is the handwash of the deceased and also gun powder residue detected in two cotton swabs found at the residence of the deceased to come to the conclusion that the deceased had fired from the said gun which was seized. The fact that the deceased had also failed to surrender but had ran out shooting in the direction of the police in a bid to escape, upon which the police has retaliated by firing upon him has also confirmed the conclusion of the learned Enquiry Officer that a genuine encounter had taken place. There is however, an observation that police should have exercised restraint once they have seen the suspect have fallen, which only goes to show that it was accepted that excessive use of force by the police had taken place.

48. On an analysis of the observations made above, what is clear is that there are two versions of the sequence of events which occurred on the said date, that is, on 04.03.2015, one, on the part of the witnesses who are

the residents of the village and another from the police personnel who were also part of the operation. Evidently, what is noticed is that proper investigation to find out the actual truth have not been adequately dealt with by the Investigating Officer, inasmuch as in the investigation conducted by the CID into the two respective FIRs, one filed by the Circle Inspector B.N. Marak and the other filed by the petitioner herein, the Investigating Officer therein have filed his final report indicating that there is no credible evidence to proceed with the investigation, the findings thereto being contrary to the *prima facie* evidence, even at this stage, when there are present two viewpoints proffered by two sets of witnesses as to what exactly happened at the place of occurrence on the said day, the IO ought to have put in more diligent effort, failure to do so would only invite an adverse inference and rectification of such failure is therefore well within the scope of the powers of this Court under Article 226.

49. In the case of People's Union for Civil Liberties & Anr. v. State of Maharashtra: (2014) 10 SCC, 635 at para 7, the Hon'ble Supreme Court has re-emphasized the pre-eminence of the 'Right to Life' as guaranteed by Article 21 of our Constitution to say that it is a very precious right and is available to every person where even the State has no right to violate that right. Under the circumstances of the case of the petitioner, even if random instances are cited which would be done so herein, it is *prima facie* seen

that the fact that the deceased son of the petitioner died as a result of police firing without due procedure being followed is apparent.

50. The first instance is when the respondents have presented a picture that the encounter took place in the dark night at about 3:00 am was contradicted by the assertion of the police that the operation started at 3:00 am but by the time the police party reached the place of occurrence, that is, the house of the deceased son of the petitioner, it was already 5:00 am. Now, 5:00 am in the month of March cannot be dark, so the said encounter took place at dawn during daylight hours. Therefore, the contention that since it was dark, the police party are not able to see or know the number of militants who are holding out in the house for which about 97 rounds of ammunitions was fired is again not well founded.

51. Another instance is the allegation that the deceased son of the petitioner came out firing at the police party for which self defence was resorted to is also found faulty inasmuch as evidence would suggest that the deceased after coming out of the house, he ran towards the jungle or stream on a sloping terrain and in the process, he was fired upon to the extent that on his death, the post mortem report had indicated that there was found 9 entry wounds, 6 exit wounds, 4 glancing wounds and 2 lacerated wounds. The opinion of the learned District and Session Judge that there appears to have been used excessive force is not far from the truth.

52. On the other hand, if what the police party said is correct that the deceased was using a country made firearm, it is again in the evidence of the Magistrate who had gone for the inquest that such a firearm was found, but the same was a rusted pistol with a jammed magazine and on being forced open with a stone by the police officer at the scene, two live ammunitions was found therein. Nobody in his right mind will use a rusted pistol in the face of a confrontation with a large number of police personnel. Therefore, this aspect of the matter required to be examined thoroughly.

53. In the light of such contradictory *prima facie* evidence, it would be but natural that the complete truth is unearthed and as observed above, the investigation as regard the two FIRs being closed, perhaps prematurely, the power of this Court to direct for a fresh investigation by a time-tested independent agency like the Central Bureau of Investigation (CBI) may not be an improper course of action under the circumstances.

54. In this regard, it may not be out of place to refer to the case of *Om Prakash & Ors. v. State of Jharkhand: (2012) 12 SCC 72* wherein at paragraph 42 of the same the Hon'ble Supreme Court has observed as follows:

“42. It is not the duty of the police officers to kill the accused merely because he is a dreaded criminal. Undoubtedly, the police have to arrest the accused and put them up for trial. This Court has repeatedly admonished trigger-happy police personnel, who liquidate criminals and project the incident as an encounter. Such

killings must be deprecated. They are not recognised as legal by our criminal justice administration system. ...”

55. The cases cited by the learned AG, that is, the case of *Secretary, Minor Irrigation & Rural Engineering Services, U P* (supra) and *Committee for Protection of Democratic Rights, West Bengal* (supra) will lend credence to the findings of this Court that there is indeed a *prima facie* case for investigation by the CBI whereby the death of the deceased son of the petitioner has occurred under unexplained circumstances.

56. Under the facts and circumstances of the case in question, the same warrants calling upon the CBI to investigate, since the accusations are directed against the police personnel and also because the investigation carried out by the State CID has not been conducted properly. In this regard, the case of *Rubabbuddin Sheikh v. State of Gujarat & Ors: (2010) 2 SCC 200*, para 51, 52, 53 & 54 duly reproduced below is found relevant.

“51. Having heard the learned senior counsel appearing for the parties and after going through the eight action taken reports submitted by the police authorities before this Court and after considering the decisions of this Court cited at the Bar and the materials on record and considering the nature of offence sought to be investigated by the State police authorities who are themselves involved in such crime, we are unable to accept that the investigation at this stage cannot be handed over to the CBI Authorities or any other independent agency. We have already discussed the decisions cited by Mr. Mukul Rohatgi, learned senior counsel appearing for the State of Gujarat and have already distinguished the said cases and came to a conclusion that those decisions were rendered when CBI enquiries have already been made and at that stage this Court held that after the

charge sheet is submitted, the CBI authorities would not be able to approach this Court or the High Court to have issuance of directions from this Court.

52. In R.S. Sodhi vs. State of U.P. (AIR 1994 SC 38) on which reliance was placed by the learned senior counsel appearing for the writ petitioner, this Court observed:

"2. ...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)

This decision clearly helps the writ petitioner for handing over the investigation to the CBI Authorities or any other independent agency.

53. It is an admitted position in the present case that the accusations are directed against the local police personnel in which high police officials of the State of Gujarat have been made the accused. Therefore, it would be proper for the writ petitioner or even the public to come forward to say that if the investigation carried out by the police personnel of the State of Gujarat is done, the writ petitioner and their family members would be highly prejudiced and the investigation would also not come to an end with proper finding and if investigation is allowed to be carried out by the local police authorities, we feel that all concerned including the relatives of the deceased may feel that investigation was not proper and in that circumstances it would

be fit and proper that the writ petitioner and the relatives of the deceased should be assured that an independent agency should look into the matter and that would lend the final outcome of the investigation credibility however faithfully the local police may carry out the investigation, particularly when the gross allegations have been made against the high police officials of the State of Gujarat and for which some high police officials have already been taken into custody.

54. It is also well known that when police officials of the State were involved in the crime and in fact they are investigating the case, it would be proper and interest of justice would be better served if the investigation is directed to be carried out by the CBI Authorities, in that case CBI Authorities would be an appropriate authority to investigate the case.”

57. The judgments relied upon by the learned counsel for the petitioner deals mainly with the aspect of grant of compensation in cases of violation of the right to life of a citizen. However, as far as the prayer for award of compensation is concerned, this is not the right time for consideration of the same as this Court is already of the considered opinion that fresh investigation in the case of the unnatural death of the son of the petitioner is required. If, after proper investigation and on conclusion of trial, the deceased son of the petitioner is exonerated, then compensation will definitely be awarded even under the provisions of Section 357 of the Cr.P.C or under other related provisions.

58. In the final analysis, this Court does hereby directs the Central Bureau of Investigation (CBI) to take up investigation into the cases referred to in Tura P.S. Case No. 50(3) of 2015 under Sections

120/120(B)/121(A)/122/123/353/307 IPC read with Sections 25(1-A) (1-B) Arms Act and Sections 16/17/18/20 of the Unlawful Activities (Prevention) Act and also in Tura P.S. Case No. 53(3) 2015 under Section 304(A) IPC and to file the Report before the competent court of jurisdiction within 3(three) months from the date of this Order.

59. The police authorities, particularly, the Superintendent of Police, West Garo Hills District is hereby directed to hand over all relevant records and materials to the CBI to facilitate such investigation. The records pertaining to the Enquiry Report of the learned District and Sessions Judge, Tura which was produced before this Court is also to be handed over to the CBI.

60. It is also made clear that any expression of opinion by this Court in this order is only for the limited purpose of answering the question as to whether the investigation in question is to be handed over to the CBI and as such, the same should not influence the investigating agency who are to carry out their investigation with an open mind based on factual considerations.

61. Let copy of this order be forwarded to the Superintendent of the CBI, Shillong as well as the Superintendent of Police, West Garo Hills District for information and necessary action.

62. Under the peculiar facts and circumstances of this particular case,

there will be no order as to costs. The same is hereby disposed of accordingly.

Judge

Meghalaya
02.05.2023
"Tipilynti-PS"

