

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.65 of 2014

Arising Out of PS.Case No. -596 Year- 2013 Thana -Kotwali District- PATNA

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1. Gloria Aind W/O Rev. Benjamin Marshall Aind Resident Of Diosesan Village Church Road, P.S. Chutia, District Ranchi (Jharkhand).

.... Petitioner/s

Versus

1. The State Of Bihar through the Director General of Police, Bihar.
2. The Director General of Police, Bihar.
3. The Senior Superintendent of Police, Patna
4. The Officer in Charge, P.S. Kotwali, Patna.
5. The Central Bureau of Investigation, New Delhi Through The Superintendent Of Police, CBI, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar Upadhyay, Adv.

For the Respondent/s : Mr. Amresh, A.C. to SC-11

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 10-02-2015

Petitioner of this case is mother of one Bimal Nethnail, who died in a road accident at 11.00 p.m. on 5th October, 2013 near High Court round about. In the said accident, apart from deceased Bimal Nethnail, one Manish Kumar son of Sri Narayan Mahto had also sustained injuries. The deceased son of the petitioner was an Assistant Professor in BIT, Patna. One of his colleague Chandan Kumar had lodged an F.I.R. in this regard, pursuant to which Kotwali P.S.Case No. 596 of 2013 dated 6th October, 2013 was registered for the offences punishable under sections 279, 357 and 304-A of the Indian Penal Code against unknown.

Learned counsel for the petitioner has submitted that after coming to know about the death of Bimal Nathnail, the petitioner and



other family members came to Patna from Ranchi. They took the dead body to Ranchi and buried it. However, subsequently they came to know that it was not a case of accidental death rather the deceased was killed in a planned manner. They approached the police in this regard but the police have taken no step so far. He has further submitted that the Bihar Police is not competent to do investigation properly in such matters and only a scientific investigation carried out by some specialized investigating agency can unravel the truth. In such background of facts, the petitioner has prayed for issuance of mandamus to the respondents to hand over the investigation of the case to the CBI.

On the contrary, learned counsel for the State has submitted that the allegations being made by the petitioner against the investigating agency are unfounded. There is no material on the basis of which it can be said that the investigation in the matter is not being carried out properly.

Learned counsel for the CBI has also submitted that there is nothing special about the present case which requires investigation by the CBI.

Having heard the parties, I find that the investigation into a cognizable offence cannot be handed over to any other agency simply on the basis of some wild allegations being made by a party to

the case.

In **T.C. Thangaraj v. V.Engammal & Ors [A.I.R. 2011 SC 3010]** two appeals had been preferred before the Hon'ble Supreme Court against the order by which the High Court had entrusted the investigation of the case to the Central Bureau of Investigation. The Hon'ble Supreme Court after discussing the facts of the case in detail and taking into consideration the previous judgment rendered by the Constitution Bench of the Hon'ble Supreme Court in **State of West Bengal & Ors. v. Committee for Protection of Democratic Rights, West Bengal & Ors. [A.I.R. 2010 SC 1476]** held in paragraph nos.9 and 10 as under:

“9. The decision of the two-Judge Bench of this Court in *Ramesh Kumari v. State (NCT of Delhi) & Ors. (supra)* will have to be now read in the light of the principles laid down by the Constitution Bench of this Court in *State of West Bengal & Ors. v. Committee for Protection of Democratic Rights, West Bengal & Ors. (supra)*. The Constitution Bench has considered at length the power of the High Court to direct investigation by the CBI into a cognizable offence alleged to have been committed within the territorial jurisdiction of a State and while taking the view that the High Court has wide powers under Article 226 of the Constitution cautioned that the courts must bear in mind certain self-imposed limitations. Para 70 of the opinion of the Constitution Bench in *State of West Bengal & Ors. v. Committee for Protection of Democratic Rights, West Bengal & Ors (AIR 2010 SC 1476:2010 AIR SCW 1829)(supra)* is extracted hereinbelow:



“Before parting with the case, we deem it necessary to emphasize 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. Insofar as the question of issuing a direction to 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 extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil 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 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.”

(emphasis supplied)

“10. It will be clear from the opinion of the Constitution Bench quoted above that the power of the High Court under Article 226 of the Constitution to direct investigation by the CBI is to be exercised only sparingly, cautiously and in exceptional situations and an order directing to CBI is not to be passed as a matter of routine or merely because a party has levelled some



allegations against the local police. In the impugned order, the High Court has not exercised its constitutional powers under Article 226 of the Constitution and directed the CBI to investigate into the complaint with a view to protect her personal liberty under Article 21 of the Constitution or to enforce her fundamental right guaranteed by Part III of the Constitution. The High Court has exercised its power under Section 482 CrPC on a grievance made by the complainant that her complaint that she was cheated in a loan transaction of Rs 3 lakhs by the three accused persons, was not being investigated properly because one of the accused persons is an Inspector of Police. In our considered view, this was not one of those exceptional situations calling for exercise of extraordinary power of the High Court to direct investigation into the complaint by CBI. If the High Court found that the investigation was not being completed because P. Kalaikathiravan, an Inspector of Police, was one of the accused persons, the High Court should have directed the Superintendent of Police to entrust the investigation to an officer senior in rank to the Inspector of Police under Section 154(3) CrPC and not to CBI. It should also be noted that Section 156(3) of the Code of Criminal Procedure provides for a check by the Magistrate on the police performing their duties and where the Magistrate finds that the police have not done their duty or not investigated satisfactorily, he can direct the police to carry out the investigation properly, and can monitor the same. (See Sakiri Vasu v. State of U.P. & ors. (2008) 2 SCC 409 : (AIR 2008 SC 907 : 2008 AIR SCW 309).”

Taking into consideration the facts of the present case and the law laid down by the Hon’ble Supreme Court in respect of an investigation to be handed over to the Central Bureau of investigation, I find that there is nothing extraordinary about the present case. The

issue involved in the present case is not of national or international ramification. The informant or the victim of the case cannot choose the investigating agency of his/her choice for the purpose of investigation of a case brought at his/her instance. There is absolutely no merit in this case. It is accordingly dismissed.

(Ashwani Kumar Singh, J)

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