

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.823 of 2014

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

Satyendra Prasad Singh son of Late Ramsharan Prasad Singh, resident of 504, Ganpati Apartment, Priyadarshi Nagar near D.P.S. More, Bailey Road, Patna-801503

.... Petitioner/s

Versus

1. The Union of India through its Secretary, Ministry of Defence, Govt. of India, New Delhi
2. Director General, Indian Coast Guard, Ministry of Defence, Govt. of India, Coast Guard Headquarters, National Stadium Complex, New Delhi-1
3. Additional Director General, Indian Coast Guard, Ministry of Defence, Govt. of India, Headquarters, Indian Coast Guard Regional (East) Rajaji Salai near Napier Bridge, Chennai – 600009
4. The Inspector General, Indian Coast Guard, Eastern Zone, Chennai
5. The Central Bureau of Investigation, Plot No. 5-B, CGO Complex, Lodhi Road, New Delhi- 110003

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Tuhin Shankar, Advocate

For the Respondent/s : Mr. Sanjay Kumar, Standing Counsel, C.B.I.

For the Union of India : Mr. Chhaya Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 27-03-2015

In this application under Articles 226 and 227 of the Constitution of India, the prayer of the petitioner in paragraph 1 is as under:-

“1. That the instant application is being filed for *inter alia* the following reliefs ex-debito justitia:

(i) To direct an Investigation to be conducted by Central Investigation Agency with regard to mysterious disappearance/death of the petitioner's son during a diving operation as a Coast Guard

Assistant Commandant for a fair and transparent investigation into incident to fix the culpability of the Senior Officers of Coast Guards responsible for deliberate and negligent act in the said incident.

(ii) To direct the CBI to take over the investigation from the police in Vakalapudi Marine P.S.No.16/2013 dated 03.05.2013.

(iii) To direct the Respondent Indian Coast Guard/Indian Navy to initiate a Court Martial Proceeding against the officers responsible for their deliberate and intentional act of ordering the petitioner's son to undertake the diving operation in extremely rough weather and turbulent sea.

(iv) To call for the report from the Respondent Coast Guard/Indian Navy as well as the local police to the action taken by them pursuant to Court of Enquiring/Lodgment of the FIR."

2. The petitioner is father of the Late Assistant Commandant Sumit Kumar, who joined the Indian Coast Guard Service in the year 2010. He was last posted in Kakinada, East Godawri (Andhra Pradesh). On 30th April, 2013 at around 10.00 a.m. the petitioner was informed that his son was traceless since 29th April, 2013 at 3.15 p.m. after a diving operation off Kakinada Port. It was informed that on 29th April, 2013 the petitioner's son was on sail in a ship named "SAGAR-44". The said ship had taken the charge over a Sri Lankan



ship which had entered into India Sea Border. SAGAR-44 was pulling the Sri Lankan ship with the help of rope so that they can surrender it before Indian authority. When Sagar-44 was at a distance of 15 kilometer to its port Kakinada (Andhra Pradesh), India, the rope got broken and stuck to the propeller of SAGAR-44. Under the command of the Captain Y.K.Singh, the son of the petitioner was called for rescue. The petitioner's son being a Diving Supervisor called his team of five members for the operation. While executing the operation the petitioner's son had given instruction to his team to jump from the ship so that any leakage in oxygen cylinder could be checked, but Captain of the ship had instructed them to use ladder to reach GEMINI Boat (a small boat). Meanwhile a Junior Officer of the petitioner's son jumped into the sea and reached the GEMINI Boat. Thereafter, the petitioner's son also jumped off but did not come up to sea surface. In spite of a rescue operation, the petitioner's son could not be traced or located. The petitioner suspected some foul play into the incident and he ran from pillar to post in order to find out the truth. An FIR was lodged on 3rd May, 2013 before Vakalapudi Marine Police Station bearing Vakalapudi Marine P.S.Case No. 16 of 2013 on the basis of the written report submitted by one P.Kumar, an Assistant Commandant of ICGS, Sagar in this regard.

3. Learned counsel for the petitioner has submitted that the



copy of the said FIR was obtained by the petitioner which contains cryptic information with regard to the incident in question. The FIR is only missing person report in the nature of Station diary entry and none of the circumstances/background/manner of incident and the possibility of cause of death of the petitioner's son was reported. The cryptic FIR which leads the police to nowhere which in all probability would have not made any progress due to lack of wherewithal beyond the report. The police have never made any effort to get in touch with the petitioner who being a father and only person other than the persons from within the Coast Guard Organisation having access to whatever information soon after the incident.

4. Learned counsel for the petitioner has further submitted that the aforesaid FIR is merely an eye wash. He has submitted that Central Bureau of Investigation be directed to take over the investigation from the police in Vakalapudi Marine P.S. Case No. 16 of 2013 so that truth may be revealed and investigation may be taken to its logical end.

5. He has further submitted that the respondents be directed to initiate a court Martial Proceeding against the Officers responsible for their deliberate and intentional act of ordering the petitioner's son to undertake diving operation in extremely rough weather and turbulent sea.



6. Learned counsel for the Union of India has raised a preliminary objection regarding maintainability of the case before this Court. According to him, in case, the petitioner has any grievance, he would have approached the appropriate Court having territorial jurisdiction into the matter. On merits, according to the instructions received by him, he has submitted that on 26th April, 2013 ICGS Sagar left Chennai Harbour at 14 hours between 26th April, 2013 to 27th April, 2013. The ship carried out various activities ranging from deck landing operations, anchoring run practices and night flying operations. On completion of operation, the ship proceeded to area patrol followed by anchoring run practices. On 28th April, 2013 the ship apprehended two Sri Lankan fishing boats at around 6.30 hours. The apprehended Sri Lankan crews were embarked on board ICGS Sagar. On arriving off Kakinada Port on 29th April, 2013, the ship started disengaging the tow. ICGS C-151 by then had reached area for taking over both SLFB along with the crew for handing over to the local police. However, while disengaging the tow of the second SLFB, the boarding team cut the connecting rope and disengaged the tow from the outboard end, due to which the rope got entangled in the propeller. Though, the boarding team tried to clear the entangled rope using boat hook, the rope remained entangled with propeller. In order to clear the entangled rope, Sandeep, Nvk (QA), a subordinate diver



of the ship, was ordered by the Commanding Officer to remove it. Subsequently, the petitioner's son came to the quarter deck and decided to remove the entangled rope. At about 1510 hours on 29th April, 2013, after switching off the ships machinery and under water equipment and after obtaining a diving clearance certificate preparations for diving operations had commenced. Since, Sandeep Nvk (QA) was instructed to use the jumping ladder for boarding the GENINI, he went to the jumping ladder. However, the petitioner's son called Sandeep Nvk (QA) back and ordered him to jump into the water from the quarter deck of the ship. Further, the petitioner's son also followed him. Though Sandeep Nvk (QA) surfaced after sometime, the petitioner's son did not surface after jumping. He has further submitted that there is no fault on the part of any one and it was purely a case of accidental death while discharging official duty. The petitioner's son himself took a decision to jump into the water, which ultimately resulted into the tragic incident of missing of the Officer. On the spot decision of jumping into the water was independently taken and executed by the petitioner's son in a short span before anybody could intervene.

7. Learned counsel for the Central Bureau of Investigation has also raised a preliminary objection and has submitted that this Court does not have any territorial jurisdiction over the matter as the

entire occurrence took place at Kakinada in East Godawari, district of Andhra Pradesh. The FIR in question has also been instituted at police Station Vakalapudi Marine.

8. The criminal case sought to be transferred from the local police to the CBI was instituted in the East Godawari, district of Andhra Pradesh. The accident in question took place in the Bay of Bengal, Kakinada urban, East Godawari. The petitioner's son was in Indian Coast Guard Service and at the relevant time was posted as Assistant Commandant in Kakinada, East Godawari, Andhra Pradesh. There is no dispute that no part of cause of action arose within the territorial jurisdiction of this Court. Under such circumstances, I am of the considered opinion that this Court does not have any territorial jurisdiction over the matter. In that view of the matter, I am not inclined to entertain this application on merits as the entire cause of action took place within the territorial jurisdiction of Andhra Pradesh High Court. Accordingly, the application is disposed of as not maintainable before this Court but, it would not preclude the petitioner from moving before the appropriate court, if so advised.

(Ashwani Kumar Singh, J)

Md.S./-

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