

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.14 of 2015

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

=====

Dwarika Ram @ Dawarika Prasad, Son of Late Biseshwar Ram, Resident of
Rajauli P.S.-Rajauli, District-Nawada

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna
2. The Home Secretary, Govt. of Bihar, Patna
3. The Director General of Police, Bihar, Patna.
4. The Inspector General of Police, Central Range, Patna
5. The Deputy Inspector General of Police, Magadh Range, Gaya
6. The Superintendent of Police, Nawada
7. The Deputy Superintendent of Police, Rajauli, District-Nawada
8. The Station House Office-cum-Officer-in-Charge, Rajauli Police Station,
Rajauli, Nawada
9. Investigating Officer of Rajauli Police Station case No.70 of 2014
10. Investigating Officer of Rajauli Police Station case No.71 of 2014

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Kundan Kumar, Advocate

For the Respondent/s : Mr. Purnendu Singh, GP-27

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 06-08-2015

The petitioner is informant of Rajauli P.S. Case No. 70
of 2014 dated 18.04.2014 registered under Sections 302 and 307
read with 34 of the Indian Penal Code and Section 27 of the Arms

Act.

The prayer of the petitioner in the present case is to hand over investigation of the case to the Central Bureau of Investigation so that a free and fair investigation of the aforesaid police case may be conducted.

Learned counsel for the petitioner submits that the local investigating agency is in collusion with the accused and thus, the investigation is not being conducted in a fair and impartial manner.

On the other hand, learned counsel for the State submits that the police are sensitive about the matter and investigation of the case is being carried out in a proper manner. He further contends that the informant of the case cannot dictate the manner of investigation.

I have heard the parties and perused the record.

In **T.C. Thangaraj Vs. V. Engammal & Ors. [AIR 2011 SC 3010]**, two appeals were preferred before the Supreme Court against the order by which the High Court had entrusted the investigation of the case to the Central Bureau of Investigation. The 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 Supreme Court in **State of West Bengal & Ors. Vs. Committee for Protection of Democratic Rights,**

West Bengal & Ors. [AIR 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 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. 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 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 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)).”

In the present case, the informant has alleged in the FIR that his nephew Ajay Kumar, his wife Madhu Devi and two others, namely, Kanak Kumar and Rajat Kumar were instrumental behind the murder of one of his sons which took place on 19.07.2014. In the said incident, another son of the petitioner has also sustained injuries.

Taking into consideration the facts of the present case and the law laid down by the Supreme Court in respect of an investigation to be handed over to the C.B.I., I am of the view that the allegations made in the present case are though serious, the same has no national or international ramification. It is a plain and

simple case of murder and investigation of the case is being conducted by the police having territorial jurisdiction. There is nothing on record on the basis of which the impartiality about the investigation can be doubted.

In that view of the matter, I am not inclined to accede to the prayer made by the petitioner. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

U		T	
---	--	---	--