

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1128 of 2014

Arising Out of PS.Case No. -635 Year- 2014 Thana –Begusarai Townl District- BEGUSARAI

1. Mritunjay Singh @ Mritunjay Prasad Singh Son of Late Ramashray Prasad Singh, Resident of Village - Mokhtiyarpur, P.S. - Bhagwanpur, District - Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar through the Home Secretary, Govt. of Bihar, Patna.
2. The Home Secretary Govt. of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Additional Director General of Police (Head Quarter Cum Law and order), Bihar, Patna.
5. The Inspector General of Police, Bhagalpur.
6. The Deputy Inspector General of Police, Munger.
7. The Superintendent of Police, Begusarai.
8. The Dy. Superintendent of Police, Town, Begusarai.
9. The Dy. Superintendent of Police, Teghra, Begusarai.
10. The Station House Officer, Bhagwanpur Police Station, Begusarai.
11. The Station House Officer, Lohiyanagar Outpost, District - Begusarai.
12. The Station House Officer, Begusarai Town, District - Begusarai.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajan, Adv.

For the Respondent/s : Mr. Kumar Manish, SC 21

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 03-08-2015

Heard learned counsel for the petitioner and learned counsel for the State.

2. In this application filed under Articles 226 and 227 of the Constitution of India, the petitioner seeks a direction to the respondents to hand over the investigation of Begusarai Town P.S.Case No. 635 of 2014 to the Central Bureau of Investigation or Special Investigation Team or any other independent agency for fair

and impartial investigation of the aforesaid case.

3. The FIR was registered on the basis of statement of SI Deepak Kumar, SHO, Lohiyanagar Police Station, Begusarai on 09.10.2014 under sections 302 and 201 read with 34 of the Indian Penal Code against unknown.

4. According to the prosecution case, on 09.10.2014 at 8.45 a.m. the informant got information that a dead body of an unknown person is lying in ITI field. The informant along with other police personnel went to ITI field and found a dead body of a male aged about 35 years, lying on the road. Though a huge crowd had assembled near the dead body but none of them recognized the body. Subsequently, in course of investigation of the case, it was found that the body was of one Manish Kumar son of the petitioner. The investigation of the case is going on. In course of investigation, certain accused persons have been arrested.

5. Learned counsel for the petitioner has submitted that the investigation of the case is not being done in a fair and impartial manner. The petitioner has given some clue to the police but the police are trying to shield the real culprits. According to him, some innocent persons, who are also related to the petitioner, have been made accused in this case.

6. A counter affidavit has been filed on behalf of the State.

It has been contended in the counter affidavit that the investigation of the case is being done in a fair and impartial manner and a report would be submitted by the Investigating Officer of the case immediately after completion of the investigation.

7. In my view, since the investigation of the case is going on, it would not be proper for this Court to make any comment on the manner of investigation. So far as handing over the case to the Central Bureau of Investigation is concerned, in *T.C. Thangaraj v. V. Engammal & Ors.* [A.I.R. 2011 SC 3010] two appeals had been preferred before the Supreme Court against the order by which the High Court had entrusted 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 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 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 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)).”

8. Taking into consideration the facts of the present case and the law laid down by the Supreme Court in respect of investigation to be handed over to the Central Bureau of Investigation, I find that the instant case has no national or

international ramifications. There is nothing extra-ordinary about the present case. The petitioner, who is father of the deceased, may not be satisfied with the manner of investigation, but it is well settled that at the stage of investigation neither the informant nor the accused has any say. It is for the investigating agency to go to the root of the matter and find out as to who the offenders are. At this stage, it would not be appropriate for this Court to give any finding in respect of investigation of the case.

9. In that view of the matter, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

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