

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

WP(C) .No. 7433 of 2014 (D)

PETITIONER :

BINDU V.S
W/O LATE RAMABHADRAN, SREE RAMA CHANDRA VILASOM
NETTAYAM, NEDIYARA P.O., KOLLAM DISTRICT.

BY ADV. SRI.ANCHAL C.VIJAYAN

RESPONDENTS:

1. UNION OF INDIA
REPRESENTED BY ITS SECRETARY
MINISTRY OF PERSONAL PUBLIC GRIEVANCES AND PENSION
GOVERNMENT OF INDIA
(DEPARTMENT OF PERSONAL AND TRAINING), NORTH BLOCK
NEW DELHI, PIN - 110 001.

2. SECRETARY
MINISTRY OF PERSONAL PUBLIC GRIEVANCES AND PENSION
GOVERNMENT OF INDIA
(DEPARTMENT OF PERSONAL AND TRAINING), NORTH BLOCK
NEW DELHI, PIN - 110 001.

3. THE DIRECTOR
CENTRAL BUREAU OF INVESTIGATION, (CBI), PLOT NO.5 - B
6TH FLOOR, CGO , COMPLEX
LODHI ROAD, NEW DELHI, PIN - 110 003.

4. PRINCIPAL
SECRETARY TO GOVERNMENT, DEPARTMENT OF HOME (M)
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM
PIN - 695 001

5. THE DIRECTOR GENERAL OF POLICE
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM
PIN - 695 001.

* ADDL. R6 SUBHASH, S/o. SUKUMARAN,
VALLI MANDIRAM, YEROOR.P.O.,
KOLLAM - 691 312.

* Addl.R6 is impleaded as per order dated 21.08.2015 in
I.A.No.12164/2015.

R1 & R2 BY ADVS. SRI.P.PARAMESWARAN NAIR, ASG OF INDIA
SRI.N.NAGARESH, ASG OF INDIA
R3 BY ADV. SRI.P.CHANDRASEKHARA PILLAI, SC for C.B.I.
R4 & R 5 BY ADV. SRI.T.ASIF ALI, DGP
ADDL.R6 BY ADV. SRI.GEORGE POONTHOTTAM

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
15-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

- EXHIBIT P1 : TRUE COPY OF THE FIRST INFORMATION REPORT AND FIRST INFORMATION STATEMENT IN CRIME NO.314/2010 OF YEROOR POLICE STATION
- EXHIBIT P2 : TRUE COPY OF THE POST - MORTEM CERTIFICATE OF THE DECEASED IN CRIME NO.314/2010 OF YEROOR POLICE STATION
- EXHIBIT P3 : TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE WIFE OF THE DECEASED BEFORE THE 5TH RESPONDENT
- EXHIBIT P4 : TRUE COPY OF THE STATEMENT FILED ON BEHALF OF THE 4TH RESPONDENT DATED 01.07.2010 IN WP(C) NO.17838/2010 OF THIS HON'BLE COURT
- EXHIBIT P5 : TRUE COPY OF THE STATEMENT FILED BY THE DEPUTY SUPERINTENDENT OF POLICE, PUNALUR DATED 15.11.2010 IN WP(C) NO.17838/2010
- EXHIBIT P6 : TRUE COPY OF THE APPLICATION NO.AR.664/2010 DATED 25.11.2010 FILED BY THE BROTHER OF THE DECEASED IN CRIME NO.314/2010 OF YEROOR POLICE STATION ALONG WITH THE ORDER OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, DATED 26.11.2010
- EXHIBIT P7 : TRUE COPY OF THE JUDGMENT DATED 02.09.2010 IN WRIT APPEAL NO.1474/2010
- EXHIBIT P8 : TRUE COPY OF THE KERALA GAZETTE NO.1309 DATED 28.12.2012 PUBLISHED BY THE 4TH RESPONDENT
- EXHIBIT P9 : TRUE COPY OF THE JUDGMENT IN WP(C) NO.17838/2010 OF THIS HON'BLE COURT
- EXHIBIT P10 : TRUE COPY OF THE COMMUNICATION NO.228/4/2013 AVD II DATED 09.05.2013 ISSUED BY THE 2ND RESPONDENT TO THE CHIEF SECRETARY, GOVERNMENT OF KERALA
- EXHIBIT P11 : TRUE COPY OF THE COMMUNICATION VIDE NO.228/4/2013 AVD II DATED 29.11.2013 ISSUED BY THE 2ND RESPONDENT TO THE CHIEF SECRETARY, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM

RESPONDENT(S) ' ANNEXURES:

- ANNEXURE R4(a) : TRUE COPY OF THE G.O. DATED 24.12.2013.
- ANNEXURE R4(b) : TRUE COPY OF THE LETTER DATED 04.01.2014.
- ANNEXURE R4(c) : TRUE COPY OF THE ORDER DATED 09.01.2014.

//True copy//

P.A to Judge

[CR]

B.KEMAL PASHA, J.

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W.P.(C) No. 7433 of 2014

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Dated this the 15th day of October, 2015

JUDGMENT

The husband of the petitioner, Ramabhadran was a social worker attached to a particular political party. In front of the wife and children, he was hacked to death during the night of 10.04.2010. From the very beginning, the petitioner was clamouring that a proper investigation was not being carried out by the local Police. Her complaint is that initially, the investigation was being carried out by an efficient Police Officer, who was the then Dy.S.P. Subsequently, he was removed and another person was placed, which according to her, was for burial of an impartial investigation.

2. At that time, the petitioner had approached this Court through a Writ Petition and challenged the removal of

the Investigating Officer, by clamouring with a complaint that it was for the purpose of shutting out a proper investigation in the matter. This Court has disposed of the said Writ Petition by stating that the substituted Investigating Officer would be held liable, in case of no fruitful investigation in the matter. Again, the matter went on in a snail pace. Subsequently, the local Police had to do something in the matter and in order to wind it up, a final report was prepared, which was not in conformity with the legal procedure and consequently, such a final report presented before the Magistrate's court was then and there returned. Thereafter, nobody had cared to look into the matter properly.

3. When the petitioner knocked all other doors in the higher-ups, ultimately, the investigation was handed over to the Crime Branch. Still, the investigation by the Crime Branch 'is going on' and it has not reached anywhere.

4. Heard Sri.Anchal C.Vijayan, the learned counsel for

the petitioner, Sri.T.Asif Ali, the learned DGP and Sri.Chandrasekharan Pillai, the learned Standing Counsel for the CBI.

5. It is the specific case of the petitioner that a larger conspiracy is involved in the matter and the local Police have identified the assailants only, who are the hired assassins and they have even though identified the persons behind it, on account of political clout, the conspiracy behind the murder and the persons, who have employed the said hired assassins, are safely behind the curtain even now.

6. It is dissatisfied with the way, in which, the matter was being proceeded with, the petitioner has been craving for an investigation by the CBI, being the premier Investigating Agency of the country. It seems that from the very beginning, the CBI has taken a stand that they are overburdened with investigations of other cases and therefore, they are not able to take up the investigation of

this case. The learned Standing counsel for the CBI has, vehemently, argued that as the culprits in the case have been identified and arrested by the local Police and especially, when a final report was filed on 10.02.2011 before the Magistrate's Court in the matter, the CBI has nothing to do with it and therefore, the CBI may not be burdened with the liability to further investigate this case.

7. Sri. T. Asif Ali, the learned DGP has pointed out that this is a case, in which, there is even some inter-State ramifications are there behind the larger conspiracy involved in the matter and therefore, the Government had decided to hand over the investigation to the CBI, for which Ext.P8 notification was also made. It seems that the Cabinet of the State has taken a view that this case has to be investigated by the CBI and therefore, they have decided to hand over the investigation to the CBI, for which, Ext.P8 notification was issued. When the Cabinet has taken such a view, it seems that the Cabinet itself has doubts with

regard to the efficiency of the present machinery of the State to unearth the larger conspiracy involved in the case. The learned DGP has pointed out that this is a case, wherein, a larger conspiracy is involved and the Police could identify only the hired assassins in the case and they could not move an inch forward in the matter.

8. Strangely, on getting Ext.P8 notification and the request from the Government of Kerala, the CBI has taken a stand through Ext.P11 as follows:

“The matter has been reconsidered in this Department in consultation with the CBI and found that the said case was investigated by Kerala Police and sixteen accused persons were arrested and charge sheet was also filed on 10.02.2011 before the Hon'ble JFCM-1, Punalur. Moreover, there is no any interstate ramification in this case.

CBI has also informed that their branches in Kerala are overburdened with a large number of cases under investigation at the request of Government of Kerala and on the orders of the Hon'ble High Court of Kerala. Hence, owing to resource constraints, CBI is not in a position to take

up this case for investigation.”

By making a simple regret in the matter, it seems that the CBI has shirked from the responsibility to investigate the present case.

9. Ext.P11 is nothing but an insult to injury as far as the petitioner is concerned. She could procure the consent of the Government of Kerala for handing over the investigation to the CBI. This Court can imagine the hardships that might have been taken by the petitioner to get such an order from the Government and the consequent Ext.P8 notification in the matter. It seems that blindly, the request forwarded by the State Government has been turned down by the CBI through Ext.P11.

10. The deceased in the case and his dependants including the petitioner are no doubt citizens of India and they cannot be classified as citizens of Kerala. In our system, when the State has forwarded a request to the CBI to have an investigation of a case, which they could not

properly investigate, the Central Government is not expected to turn a blind eye and deaf ear towards the hard realities. Even though the law and order is on the State Government, being tax payers of the country, every citizens are entitled to have protection from the Central Government also. When the CBI has the authority to investigate cases, being handed over to them and when they are undertaking investigation of cases all over India, in all the States, the Central Government or the CBI cannot be heard to say that the CBI is overburdened and they cannot investigate a particular case. Ext.P8 is a request forwarded by the State Government. Even then, a situation has come, in which, this Court has to interfere once again to order an investigation by CBI in the matter.

11. It has come out that the earlier stand taken by the CBI that the final report had already been filed in the matter on 10.02.2011 before the Judicial First Class Magistrate's Court-I, Punalur is proved to be not correct.

No such final report was filed. Still, no final report is filed in the matter. Even if more time is granted to the present Investigating Agency to continue with the investigation, this Court is sure that nothing fruitful is going to happen.

12. Even though, from the very beginning, the CBI has been taking hostile attitude in taking over the investigation of the case, the petitioner is still clamouring for an investigation by the CBI in the matter with the expectation that the CBI only can bring out the real culprits, who are still behind the curtain. It shows the confidence of the petitioner and the common man in CBI. In such circumstances, instead of refusing to take over the responsibility, the CBI has to raise to the occasion, by taking up the challenge.

13. Matters being so, this is a fit case wherein investigation has to be ordered to be handed over to the CBI, being the premier Investigating Agency of the country. The investigation of this case is ordered to be handed over

to the CBI forthwith. The CBI shall take over the files and conduct a fruitful investigation in the matter.

14. It is made clear that the CBI has to conduct a fresh investigation in the matter and not a further investigation in the matter. Only a fresh investigation can unearth the conspiracy behind the murder of the poor man and the real persons behind such murder. With an expectation that the CBI will do the needful in the matter, this Crl.M.C is allowed.

The Chief Secretary of the Government of Kerala and the Director General of Police, State of Kerala shall make all arrangements, including all infrastructure facilities for rendering every assistance to the CBI to investigate the matter properly.

Sd/-
B.KEMAL PASHA, JUDGE

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