

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM No.M-16964 of 2014

Date of Decision:- 12.2.2015

Anita Malik

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE MEHINDER SINGH SULLAR

Present: Mr.N.S. Shekhawat, Advocate, for the petitioner.

Mr.Pravindra Singh Chauhan, Addl.A.G., Haryana
for respondent Nos.1 to 4.

Mr.R.S.Cheema, Senior Advocate with
Mr.A.S.Cheema, Advocate for respondent Nos.11 & 12.

Mr.S.K. Garg Narwana, Senior Advocate
with Mr.Teevar Sharma Dumarkha, Advocate
for respondent No.13.

MEHINDER SINGH SULLAR , J.(oral)

Tersely, the facts & material, which need a necessary mention, for the limited purpose of deciding the core controversy involved in the instant petition u/s 482 Cr.PC, to hand-over the investigation of the criminal case to Central Bureau of Investigation (for brevity 'the CBI') or to some independent investigating agency and emanating from the record, are that, Rakesh Malik son of Balwan Singh was active member/senior worker of the Bharatiya Janta Party (for short "BJP"). He was President of Traders Association before his death. On 21.02.2014, ASI Balwant Singh reached the police station and informed the SHO that some unknown persons had

committed the murder of Rakesh Malik at about 8-15/8.30 PM, by firing shots at him in his New Grain Market Office at Tosham. On the basis of the pointed information, a criminal case was registered against some unknown persons by the police.

2. During the course of investigation, the prosecution claimed that one Dalbir @ Dallu son of Dalip Singh (respondent No.9) was arrested and he made the disclosure statement, which, in substance, is as under: -

“He and Jasbir @ Jassi @ Tochar s/o Shiv Lal resident of Tosham (respondent No.7) are friends and on 20.02.2014 said Jasbir contacted him telephonically and asked for his help for one Rakesh Chahal s/o Ratan Singh resident of Tosham (respondent No.8) and in lieu of this said Rakesh Chahal will get clear the loan of his vehicle which is under possession of the finance company for defaults in payments. Said Rakesh Chahal also talked with Dalbir and asked for his help in informing the updated locations of deceased Rakesh Malik as they want to murder him. Dalbir @ Dallu agreed with this and updated the location of deceased Rakesh Malik and Rakesh Malik was murdered. During investigation, Lakhjinder Kaur @ Jinder Kaur w/o Rakesh Chahal (respondent No.5) was interrogated and she disclosed that her husband Rakesh Chahal used to say that one Rakesh Malik (deceased) is having enmity with him and is harassing him and then we planned to eliminate him. Jasbir @ Jassi @ Tochar and Mandeep @ Motha both residents of Tosham (respondents No.7 & 6 respectively) were hired for this and Dalbir @ Dallu (respondents No.9) provided the latest locations/whereabouts of the deceased Rakesh Malik. Upon this accused Jasbir @ Jassi @ Tochar was arrested and it was disclosed that Rakesh Chahal (accused) and Rakesh Malik (deceased) were not at good terms and Rakesh Malik has been murdered by Rakesh Chahal in conspiracy with his wife Lakhjinder and with the help of other accused Dalbir @ Dallu and Jasbir @ Jassi @ Tochar and Mandeep @ Motha. Said Rakesh Chahal (respondent No.8), Mandeep @ Motha and one Shankar Sharma (respondent No.10) were also arrested.”

3. The specific motive alleged against the accused was that a criminal case was registered on the complaint of one Mangat Ram, relative of Rakesh Malik (deceased) against accused Rakesh Chahal, his brother Roshan and others, through the medium of FIR No.336 dated 19.10.2009,

under Section 147, 148, 323, 325, 452, 307 and 506 read with section 149 IPC, by the police of Police Station Tosham, in which, Rakesh Chahal was declared proclaimed offender, whereas remaining accused were convicted by the trial Court. Similar motive was also alleged by the prosecution against other accused Mandeep @ Motha in regard to the murder of Deepak @ Mida son of Bishamber where deceased Rakesh Malik had been supporting the family of the deceased (therein). In this manner, Rakesh Chahal and Mandeep @ Motha accused had planned the murder of Rakesh Malik in order to take revenge.

4. Narrating the sequence of events, in all, the prosecution claimed that accused Mandeep @ Motha (respondent No.6) and Rakesh Chahal (respondent No.8), have hatched a criminal conspiracy with their other co-accused and committed the pointed murder of Rakesh Malik on 21.02.2014. In the background of these allegations and in the wake of information, a criminal case was registered against accused Lakhjinder Singh @ Jinder Kaur wife of Rakesh Chahal, Mandeep @ Motha son of Dayanand, Jasbir @ Jassi @ Tochar son of Shiv Lal, Rakesh Chahal son of Rattan Singh, Dalbir @ Dallu son of Dalip Singh and Shankar Sharma son of Dharam Dev (respondent Nos. 5 to 10), vide FIR No.56 dated 21.02.2014 (Annexure P4), on accusation of having committed the offences punishable under Sections 302, 120-B read with section 34 IPC & Section 25 of The Arms Act, by the police of Police Station Tosham, District Bhiwani, in the manner depicted here-in-above.

5. Having collected the material evidence and after completion of the investigation of the case, the police submitted the final police report (challan). Consequently, the accused were charge-sheeted for the

commission of the indicated offences and the case was slated for evidence of the prosecution by the trial Court.

6. Aggrieved by the investigation, petitioner Anita Malik, widow of Rakesh Malik, has preferred the present petition to hand over the investigation of the case to CBI, invoking the provisions of section 482 Cr.PC, inter-alia, pleading that since the deceased was a leader of BJP, so, the local police has not taken any action against accused Kiran Chaudhary, former Congress Cabinet Minister, Haryana, her daughter Shruti Chaudhary, Member of Parliament and Hari Singh Sangwan (respondent Nos.11 to 13) respectively despite repeated requests/representation (Annexure P11) to the higher authorities on account of political rivalry.

7. Sequel, the case set up by the petitioner, in brief in so far as relevant, is that till July, August, 2012, the deceased remained active supporter of respondent Nos.11 and 12. He was very popular in Tosham, elected as Presidents of the Traders Association and Baba Mongippa Labour Union, Khanak. Subsequently, respondent Nos.10 and 11 were worried about the growing mass base support of Rakesh Malik and they asked him to refrain from organizing public meetings. Consequently, the deceased had withdrawn from their party. Thereafter, respondents No.11 and 12 started harassing him and asked Excise and Taxation Officer (in short "ETO"), Bhiwani to conduct raid on the stone crushers owned by his family members. The proceedings of raid were stated to have been videographed in CD (Annexure P1) and its transcript (Annexure P2). The petitioner claimed that in the month of August, 2013, her husband had declared that he would contest the assembly election against Kiran Chaudhary (respondent No.11).

In the same sequence, on 9.11.2013, he joined BJP, one of the then main

opposition party (now ruling party) in the State of Haryana. He decided to hold a large meeting of BJP at Tosham to raise their voice against respondent Nos.11 to 13 and applied to SDO (C) Tosham for granting permission (Annexure P3) in this regard. Eventually, he started campaigning against them and addressed public in various meetings, in which, overwhelming response was received.

8. Likewise, the petitioner further claimed that on 21.2.2014 at about 8 p.m. her husband Rakesh Malik was present in his office and assigning duties to his supporters. His brothers Krishan Malik and Jogender Malik went to market to bring some goods and within a period of 1-2 minutes, they heard the noise of fire shots at their office. Both of them rushed back and had noticed 4-5 persons armed with pistols ran away from the spot shouting at them that in case, they challenged Kiran Chaudhary and Shruti Chaudhary or fight elections against them, they will meet the same fate. The true version (Annexure P5) was claimed to have been given by Krishan Kumar Malik to the police about the incident on the next day.

9. Leveling a variety of allegations and appending therewith the copies of post mortem report (Annexure P6), news item (Annexures P7 & P9), rapats (Annexures P8 & P12), CDs (Annexures P1 & P13), script (Annexure P14), photographs (Annexure P10), application (Annexure P15) and legal notice (Annexure P16), in all, according to the petitioner that all the main accused having hatched a criminal conspiracy, committed the murder of her husband Rakesh Malik **at the instance of respondent Nos.11 and 12**. On the strength of aforesaid allegations, the petitioner sought the CBI investigation in the manner as described here-in-above.

10. At the same time, the respondents have refuted the claim of

petitioner. The official respondents No.1 to 3 filed their reply, inter-alia pleading certain preliminary objections of maintainability of the petition, cause of action and locus standi of petitioner. Inter-alia, it was pleaded that initially, in fact, on receipt of information by ASI Balwant Singh, the instant case was immediately registered without any delay, vide impugned FIR (Annexure P4). The matter was duly investigated in a fair and impartial manner. The actual pointed accused have already been arrested. The disclosure statements of main accused were recorded in the presence of Executive Magistrate. The recoveries of vehicle, fire arms and cartridges used in the crime, have already been effected from them. Consequently, the entire material evidence of the main occurrence and evidence of motive of murder were also collected. During investigation, no involvement of respondent Nos.11 to 13 was found. They have not been found guilty in the murder of Rakesh Malik in any manner. The allegations leveled in the present petition by the petitioner are false. The police has already submitted the final police report (challan) and main accused have already been charge sheeted accordingly by the trial Court.

11. Similarly, respondent Nos.11 to 13 have also adopted the identical line of defence of official respondents in their respective replies. Instead of reproducing the entire contents of the replies and in order to avoid repetition suffice it to say that the contesting respondents have reiterated the investigation and the contents of the final police report (challan) submitted in the Court. It will not be out of place to mention here that they have stoutly denied all other allegations contained in the main petition and prayed for its dismissal. That is how I am seized of the matter.

12. Having heard the learned counsel for the parties, having gone

through the record with their valuable help and after bestowal of thoughts over the entire matter, to my mind, there is no merit and the instant petition deserves to be dismissed for the reasons mentioned here-in-below.

13. Ex facie the celebrated argument, relatable to the pointed documents (Annexures P1 to P16), of the learned counsel for petitioner that since there is sufficient material on record, so, the matter be referred to CBI for proper investigation, is not only devoid of merit but misplaced as well.

14. What cannot possibly be disputed here is that the law with regard to refer the matter to CBI is no more res integra and is now well settled. The epitome of the ratio of law laid down by Hon'ble Apex Court in cases Rubabbuddin Sheikh v. State of Gujarat & Ors. 2010 AIR (SC) 3175; Babubhai v. State of Gujarat & others 2010(95) AIC 232; State of Punjab v. Central Bureau of Investigation and others 2011 AIR (SC) 2962 and Narmada Bai v. State of Gujarat and others 2011 AIR (SC) 1804 and Disha v. State of Gujarat and others 2011 AIR (SC) (Crl.) 1699 relied on behalf of petitioner and K.V.Rajendran v. Superintendent of Police, CBCID South Zone, Chennai & Ors. (2013) 12 SCC 480; Vinay Tyagi v. Irshad Ali alias Deepak and others (2013) 5 SCC 762; V.P.Patil v. State of Maharashtra through the Chief Secretary, General Administration Department & Ors. 2012(6) RCR (Criminal) 359; Ashok Kumar Todi v. Kishwar Jahan & Ors. 2011(2) RCR (Criminal) 145, Sakiri Vasu v. State of UP 2008(1) RCR (Criminal) 392 and Navin Chandra N.Majithia v. State of Maharashtra (2000) 7 SCC 640, referred on behalf of contesting respondents, is that power of transferring the investigation to the CBI must be exercised in rare and exceptional cases, where the Court finds it necessary in order to do justice between the parties and to instill confidence in the public mind, or

where the investigation by the State police lacks credibility and it is necessary for having “a fair, honest and complete investigation” particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. **At the same time, it was ruled that where the investigation has already been completed and charge sheet has been filed, ordinarily superior Courts should not reopen the investigation and it should be left open to the court, where the charge sheet has been filed, to proceed with the matter in accordance with law.**

Under no circumstances, should the court make any expression of its opinion on merit relating to any accusation against any individual/accused. It was also held that the High Court has vast powers to refer the matter to an independent agency under Articles 226/227 of the Constitution of India and Section 482 Cr.PC, **if exceptional case is made out**, even after the submission of final police report (challan) in order to secure the ends of justice. However, despite wide powers while passing such order, the Courts must bear in mind certain self imposed limitations on the exercise of these constitutional/statutory powers. Similarly, it was ruled that the very plenitude of such power requires great caution in its exercise. It should not be exercised in a routine manner or only because a party has leveled some allegations against the local police.

15. Sequelly, the Constitutional Bench of Hon'ble Supreme Court in case State of West Bengal and others v. Committee for Protection of Democratic Rights, West Bengals and others (2010) 3 SCC 571, after considering the relevant legal provisions and the earlier judgments, ruled as under (para 70) :-

“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

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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. In so far as the question of issuing a direction to the 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 extra-ordinary 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 the 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.”

16. Such thus being the legal position and material on record, now the short and significant question, though important, which invites an immediate attention of this Court and arises for determination in the petition is, as to whether under these circumstances, the investigation of the instant case should be referred to CBI or not in this relevant connection ?

17. Having regard to the rival contentions of learned counsel for parties, to me, the answer must obviously be in the negative.

18. As is evident from the record that husband of the petitioner was active leader of BJP (now ruling party), whereas respondent No.11 was a Congress Cabinet Minister and her daughter (respondent No.12) was a Member of Parliament of Congress Party from State of Haryana at the relevant time of incident. The petitioner has sought the transfer of investigation of this case to CBI, mainly on the following grounds:- The first ground taken is that the ETO had conducted raid on the stone crushers & impounded the trucks of brother of the deceased one year prior to the present occurrence and since the raid proceedings & conversation between

the ETO & deceased were recorded in CD (Annexure P1) and its script (Annexure P2), so, it should be presumed that the murder of Rakesh Malik was committed by the main accused at the instance of Kiran Chaudhary (respondent No.11) and her daughter Shruti Chaudhary (respondent No.12). To my mind, this ground cannot possibly be accepted for more than one reason. At the first instance, in case, the ETO had conducted raid on the stone crushers of brother of deceased in discharge of her official duty or impounded the trucks, much prior to the present incident, in that eventuality, it cannot possibly be saith or presumed, by no stretch of imagination, that the main accused had committed the murder of Rakesh Malik at the asking of respondent Nos.11 and 12. Even in the CD (Annexure P1) and its script (Annexure P2), no allegations of any threat of murder were leveled against them.

19. Sequelly, the speculative apprehension, oozing out from the statement (Annexure P5) of Krishan Kumar Malik, that the main accused had fled away after committing the murder of his brother and they were loudly saying that this will be the fate of the person, who would fight with Kiran and Shruti Chaudhary (respondent Nos.11 and 12) and contest election against them, is not sufficient to infer that they had instructed the main accused to commit the murder of deceased. Moreover, Annexure P11 is representation dated 24.3.2014 given to President of India, Prime Minister, Governor and Chief Minister by the family members of the deceased, in which, it has been specifically mentioned that on 21.2.2014 at about 8.15 P.M. some unknown assailants had killed Rakesh Malik by firing shots in New Grain Market, Tosham and there was a protest (Bandh) against this incident in Tosham town, but the administration had not taken any

satisfactory action. Even they did not raise any accusing finger and there is not even a whisper that main accused had committed the murder of deceased at the instance of respondent Nos.11 & 12.

20. Likewise, the petitioner in this regard has pressed into service the press reports dated 25.2.2014 in Bhaskar news (Annexures P7 & P9), mentioning therein the names of respondent Nos.11 and 12, their photographs (Annexure P10) with the deceased, subsequent application dated 25.3.2014 (Annexure P15) given by brother of deceased to SDM and issuance of legal notice dated 9.4.2014 (Annexure P16) by respondent Nos.11 and 12 to petitioner & brothers of the deceased. Again to me, the press reports and photographs are not at all relevant to refer the investigation to CBI in the absence of any cogent material on record in this direction, particularly when the police appears to have fairly conducted the investigation, arrested the main accused, collected the evidence and even traced the indicated motive to commit the murder of Rakesh Malik by the main arrested accused.

21. At the same time, it remained an unfolded mystery and the learned counsel has miserably failed to point out as to how, when and in what manner, the investigation was unfair, particularly when it is not disputed by the petitioner that the main arrested accused-respondent Nos.5 to 10, have committed the murder of Rakesh Malik. Indisputably, the case of petitioner is that main arrested accused have committed the murder of Rakesh Malik at the instance of respondent Nos.11 and 12.

22. Otherwise also, it is now well settled principle of law that the investigation cannot possibly be referred to CBI merely on the wish and sweet will of petitioner by leveling bald and unsubstantiated allegations

against the police, unless and until, it is established that the local police has not conducted investigation in a proper manner, which is totally lacking in the instant case. Once the local police has conducted the investigation in a fair manner, collected the material evidence, submitted the final police report (challan) and arrested the main accused, who were accordingly charge-sheeted, then indeed, it should be left open to the trial Court to proceed with the matter in accordance with law at this stage, in view of law laid down by Hon'ble Apex Court in V.P.Patil and K.V.Rajendran's cases (supra).

23. Not only that, there is yet another aspect of the matter, which can be viewed entirely from a different angle. As indicated here-in-above, the police has fairly conducted the investigation, collected the material evidence and traced the motive of murder of Rakesh Malik. After completion of the investigation, the police has submitted the final police report (challan), the main accused were accordingly charge sheeted, the case was listed for evidence of prosecution and evidence in part has already been recorded by the trial Court. In that eventuality, in case some additional evidence would be available on record, then the Court is well within its jurisdiction to summon the additional accused, as postulated u/s 319 Cr.PC. Hence, the law laid down in the aforesaid judgments “mutatis mutandis” is applicable to the facts of the present case and is the complete answer to the problem in hand and the contrary submissions of learned counsel for petitioner “stricto sensu” deserve to be and are hereby repelled.

24. Therefore, if the crux of the indicated material on record is put together, then to my mind, the conclusion is inescapable and irresistible that no case/ground, muchless cogent, to refer the matter to CBI is made out

under the present set of circumstances. On the contrary, if the matter is referred to CBI without any material on record, as urged on behalf of petitioner, then, not only that, it will inculcate and perpetuate injustice to respondent Nos.11 and 12, at the same time, it will considerably delay the final disposal of the case against the main accused as well.

25. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

26. In the light of aforesaid reasons, taking into consideration the totality of the peculiar facts & special circumstances, emanating from the record, as discussed here-in-above and without commenting further anything on merits, lest it may prejudice the case of either side, during the course of trial of main case, as there is no merit, therefore, the instant petition is dismissed as such in the obtaining circumstance of the case.

27. Needless to mention that in the course of trial, on the basis of the evidence if it appears to the trial Court that any person not being the accused in the trial has committed the offence and the case is made out for exercise of power u/s 319 Cr.PC for proceeding against such person, it will be open to the trial Court to proceed accordingly to decide the case in accordance with law.

12.2.2015
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(MEHINDER SINGH SULLAR)
JUDGE

Whether to be referred to reporter ? Yes/No