

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. M- No. 24724 of 2013 (O&M)

Date of decision : 12.03.2015

Daljit Kaur

.....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Veneet Sharma, Advocate
for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab

LISA GILL, J.

Petitioner – Daljit Kaur is the mother of the deceased Arvinder Pal Singh. This petition has been filed for handing over investigation of FIR No. 87 dated 23.05.2013 registered under Sections 307, 353, 186, 332 IPC and Section 25 of the Arms Act at Police Station Cantonment, Amritsar to an independent agency like Central Bureau of Investigation and in alternate for directing the respondents to register an FIR regarding murder of her son – Arvinder Pal Singh by the police officials.

It is the specific averment of the petitioner that above said FIR has been registered against her deceased son Arvinder Pal Singh @ Lovely Smart only with a view to cover up his murder at the hands of the police officials.

The brief facts, as unfolded, are that the alleged incident

occurred at 6.30 p.m. at 23.05.2013 as per the prosecution version.

The above mentioned FIR was registered against the petitioner's son under Sections 307, 353, 186, 332 IPC on the basis of statement of Head Constable Prem Singh at 9.40 p.m. It is alleged by Head Constable Prem Singh that he alongwith other officials was patrolling and on the look out for the bad elements when secret information was revealed that Lovely Smart (Arvinder Pal Singh) resident of Sandhu Colony, Chhehherata is present at the shop of Saini Hair Cutting Salon in Street No. 2, Putlighar near Labour Commissioner's officer. He is wanted in a number of cases and in case raid is conducted, he can be apprehended. Consequent thereto, the police party reached Saini Hair Cutting Salon at about 6.30 p.m. where Lovely Smart was found present. On seeing the police party, he tried to escape, upon which Head Constable Prem Singh and Sandeep Singh tried to catch hold of Lovely Smart. He suddenly took out a knife from under his waist and attacked Head Constable Sandeep Singh with an intention to kill him. Head Constable Prem Singh came forward to save Sandeep Singh and he took out his service pistol to frighten Lovely Smart. Lovely Smart was told to leave Sandeep Singh upon which the accused tried to attack him also with his knife. Thereon, Head Constable Prem Singh fired one shot allegedly in his defence which hit Lovely Smart. He got injured and fell inside the door of the salon. Information regarding this incident was conveyed to Officer Incharge Inspector Sanjeev Kumar, who came to the spot alongwith other staff and took Lovely Smart in 'injured condition' to the hospital for his treatment. It is alleged that Arvinder Pal Singh

interfered in the discharge of their duty and injured Head Constable Sandeep Singh with knife with an intention to kill him.

Learned counsel for the petitioner contends that the said FIR is a clumsy attempt to cover up the murder of Lovely Smart@Arvinder Pal Singh. It is admitted that he had been implicated in some cases by the Punjab Police though they are sought to be explained by stating that the deceased was brought up in a father less home where there was no source of livelihood and he did fall into bad company. However, he was a young boy of 22 years and the offences of which her son was accused were not of such a nature that he could be labelled as a gangster or a hardcore criminal. The petitioner's specific stand is that the police officials fired at point blank range on the premises of the Hair Cutting Salon, which resulted in death of her son. Reference is made to the photographs which had been clicked by some of the persons present at the spot (Annexure P-1). The photographs show multiple gun shot fire which had pierced the glass window of barber's shop. The dead body of Arvinder Pal Singh is reflected being taken away by the police officials. The above said FIR has been registered only with a view to help and aid the guilty police officials, who have fired at point blank range without any provocation. As per Post Mortem Report (Annexure P-3), deceased received gun shot injuries on his chest. As per the said report, time between injury and death is few minutes. Therefore, an attempt on the part of the officials to cover up her son's murder by registration of aforesaid FIR is clear.

Learned counsel for the State while referring to the reply

filed on behalf of respondents No. 1, 2, 5 and 6 submits that magisterial inquiry was conducted regarding death of Arvinder Pal Singh @ Lovely Smart son of Mukhtar Singh. As per status report dated 16.10.2014 (Annexure R-1), it is opined that 'killing of' Arvinder Pal Singh was not intentional. The concluding part of the report reads as under:-

“ On perusal of the aforesaid statements and the record presented it is clear that many criminal cases were registered against Arvinder Pal Singh @ Lovely Smart, and he is required by Police in these cases. HC Prem Singh and HC Sandeep Singh had gone in his search on receipt of an information on 23.05.2013. The copy of the rojnamcha rawangi P.S. Civil Line which had been presented, in it on Sr.No. 41 the dispatch of Head Constable Prem Singh and HC Sandeep Singh is entered for this purpose. This thing was double verified by Inspector Sanjiv Kumar No. 377 B.R., Police Line, Amritsar in his statement dated 30.09.2014 also. The statements which had been recorded, in it no where it had come to light that HC Prem Singh was having some enmity with Arvinder Pal Singh alias Lovely Smart. From the circumstances of the case also, it appears that the killing was not intentional. It appears that this incident had taken place while defending themselves because the deceased Arvinder Pal Singh alias Lovely Smart had tried to use the sharp edged knife/churra. This incident was verified by Gaurav Saini on whose shop this incident had taken place and Dr. Basant Singh who were present there. None of the other on the spot witness could be present. Despite that in this connection newspaper advertisement were given on 23.01.2014 in Rojana Spokesman and on 20.03.2014 in Jag Bani.”

It is contended that the deceased was wanted in number of cases as detailed in para 7 of the status report dated 16.10.2014. He was declared a proclaimed offender. He tried to resist his arrest, caused injuries to police personnel. Head Constable Sandeep Singh received three injuries i.e. simple injury on the left arm and two abrasions on the abdomen. Reliance is sought to be placed on statements of Gaurav Saini i.e. the Barber of the shop to suggest that the deceased suddenly took out a knife when two police officials were trying to arrest him. One shot was fired, which hit Arvinder Pal Singh, due to which he died.

Reference is also made to the statement of Dr. Basant Singh to say that he is running Diljan Hospital at his house and on 23.05.2013 he was going to hospital from Putlighar at about 6.00-6.15 p.m. When he was in front of shop of Saini Hair Cutting salon, two police officials were fighting with a civilian. He stopped his car and inquired as to why these police officials were fighting with the civilian and he was apprised that this civilian is a dangerous person and a criminal. When the officials were about to nab him, he started fighting with them, took out a knife and attacked the non-Sikh police official. The turbaned official within his sight gave many warnings to the civilian but when he did not stop attacking the person, the second police official in defence took out his service pistol and fired. The boy got injured. In the meantime, Basant Singh received an important call from his home and he let the spot. This statement was recorded on 30.09.2014.

On the basis of the above, learned counsel for the State

submits that this is clearly a case where a shot had been fired in self defence by the police officials when Arvinder Pal Singh @ Lovely Smart while attempting to flee had attacked Head Constable Prem Singh with a knife. It is, thus, prayed that this petition, being devoid of merit, should be dismissed.

Heard learned counsel for the parties and gone through the file including status report filed on behalf of the respondents.

The admitted facts are that on 23.05.2013 at about 6.30 p.m., deceased Arvinder Pal Singh @ Lovely Smart was present at the shop of Saini Hair Cutting. As per the official version, Head Constable Sandeep Singh and Head Constable Prem Singh on receipt of secret information that Arvinder Pal Singh @ Lovely Smart is present at the said shop, proceeded to the spot for apprehending him as he is required in a number of cases. When they tried to apprehend him, he attacked the said two police personnel with an intention to kill and it is on this that a shot was fired by Head Constable Sandeep Singh in self defence and in defence of his colleague Head Constable Prem Singh. The deceased was allegedly warned number of times to throw away the knife but to no avail. It is vehemently urged that such circumstances are evident on record pointing to an attack by the deceased on the police personnel, which invited firing of the shot in self defence. Heavy reliance is placed upon the magisterial inquiry to buttress this argument and justify registration of FIR No. 87 against the deceased and non registration of an FIR in respect to the death of Arvinder Pal Singh.

Reliance is placed on the statement of Gaurav Saini at

whose shop the incident took place. He states that two police officials came to his shop to arrest Arvinder Pal Singh @ Lovely Smart, who used to visit his shop on earlier occasions also. He talks of a scuffle between Arvinder Pal Singh @ Lovely Smart and the police officials in which Arvinder Pal Singh took out a knife. He states that a scuffle took place and one of the police officials fired a shot which hit the deceased. There is no reference to the police officials asking Arvinder Pal Singh to put away the knife and surrender.

Statement of Dr. Basant Singh son of Darshan Singh, who is running Diljan Hospital at his residence does not improve the case of the officials. As per his statement, he stopped in front of the shop in question. On inquiry from the people present there, as to why the officials and the civilian are fighting, he was told by them that the civilian is a dangerous criminal person. When the police officials were about to nab him, he started fighting, took out a knife and started attacking the non-Sikh police official. The other turbaned official gave number of warnings to release his companion but he did not desist from attacking him and it is in this situation that a shot was fired. A perusal of the statement, as produced in the inquiry report dated 07.10.2014 (Annexure R-1) with affidavit dated 16.10.2014, it is apparent that Basant Singh has nowhere stated that he went inside the shop. He in fact projects as if the occurrence took place outside the said shop, which is not in consonance with version put forth by the official respondents.

Raj Kumar Jolly, Councillor of Ward No. 3, Putlighar,

Amritsar stated on oath that there were five persons standing

outside the shop out of whom two were in police uniform and three in civilian clothes. He later came to know that three persons in civilian clothes were also police officials. He was told by the said officials that they had come to arrest a criminal and he had been shot. He went inside the barber shop and saw a boy aged around 24/25 years lying on the floor having been shot down. He also saw marks of three bullets on the front side of the shop. One bullet allegedly struck a glass and two bullets struck the wall. He kept asking as to why the boy had been shot. He asked the police officials from which police station they had come. On their response that they had come from Police Station Civil Lines, he retorted that this area comes under Police Station Cantonment. He, thereafter, called up the Incharge of Police Station Cantonment. The police party reached there within 5-7 minutes and media persons also gathered there. When he told the media persons to click the snaps of those, who had fired, the said police officials slipped away. He categorically stated that he did not see any police official in an injured state. Said Councillor did not appear before the Sub Divisional Magistrate, Amritsar.

Doubtlessly, the Sub Divisional Magistrate, Amritsar vide his report dated 07.10.2014 has concluded that the killing of Arvinder Pal Singh @ Lovely Smart does not appear to be intentional. Reliance is placed on the version given by Gaurav Saini and Dr. Basant Singh referred to above.

An extremely glaring aspect of this case is that no medical evidence has been forthcoming in respect to the injuries allegedly sustained by Head Constable Sandeep Singh. No such

medical evidence was placed on record either before the Sub Divisional Magistrate or even before this Court to substantiate the stand taken by the official respondents. Prima facie, there does appear to be an attempt to cover up the acts of the police officials. Registration of FIR against the petitioner's son Arvinder Pal Singh @ Lovely Smart under Sections 307, 353, 186, 332 IPC on 23.05.2013 at 9.40 p.m. is indicative of anxiety and turbulence being faced by the police officials. They registered the said FIR against Arvinder Pal Singh @ Lovely Smart, who apparently died at the spot. As per the post mortem report, time which elapsed between injuries and death is a few minutes. He was admittedly brought dead to the hospital by the police officials themselves at about 7.00 p.m. A perusal of the photographs (Annexure P-1) do seem to indicate that Arvinder Pal Singh @ Lovely Smart was already dead.

Sub Divisional Magistrate, Amritsar in his report dated 07.10.2014 has concluded that the police officials fired in self defence and the 'killing' was not intentional.

In my considered opinion this by itself cannot be a ground for not registering an FIR against the police officials as envisaged under Section 154 Cr.P.C. Whether Arvinder Pal Singh was in fact killed in self defence or not would necessarily be a matter of investigation. Representation (Annexure P-4) was submitted by the petitioner in respect to her son's death. The officials were bound to register an FIR and investigate the matter as commission of a cognizable offence is clearly made out. Credibility or reliability of the same is not to be assessed in such a situation before registration of

the FIR. This is the clear mandate of law under Section 154 Cr.P.C. as succinctly interpreted by the Hon'ble Supreme Court in **Lalita Kumari versus Government of U.P. and others** 2012 (2) RCR (Criminal) 188. Present case does not fall within the categories which might even require a preliminary inquiry to find out whether a cognizable offence is made out or not. Even as per the magisterial inquiry, killing of Arvinder Pal Singh by the police officials is a fact. Question as to whether it was in self defence or otherwise is a matter of investigation. Furthermore, vehement insistence of the learned counsel for the State on the fact of the deceased being wanted in a number of cases can be of no avail. This obviously cannot be a defence available to the officials by itself. The matter has to be investigated thoroughly especially in view of the serious allegations against police personnel. The mandate of law cannot be scuttled in the manner adopted by the State.

Keeping in view the facts and circumstances of the case, it is directed that an FIR be registered forthwith against the erring officials. In the peculiar facts of the case, the investigation of the case be handed over to the Crime Branch, Punjab, Chandigarh. An officer not less than the rank of Superintendent of Police shall carry out the investigation.

Investigation in FIR No. 87 dated 23.05.2013 shall also be handed over to the Crime Branch, Punjab. Both the matters shall be investigated by the same officer and investigation shall be concluded within a period of three months from the date of receipt of certified copy of this order.

Compliance report be submitted on the lapse of three months.

Petition is, accordingly, disposed of.

12.03.2015
rts

(LISA GILL)
JUDGE