

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

CRM No.M-35697 of 2012 (O&M)

Date of Decision: March 11, 2015

Angrez Singh

.... Petitioner

vs.

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Sushil Bhardwaj, Advocate for the petitioner.

Mr. Nikhil K. Chopra, Deputy Advocate General, Punjab.

Mr. K.S. Dadwal, Advocate for the accused.

Mr. Mohit Sharma, Advocate for

Mr. Sumeet Goel, Advocate

for Cental Bureau Investigation.

*1. Whether Reporters of Local Newspapers may be allowed to see the judgment? **Yes***

*2. To be referred to the Reporters or not? **Yes***

*3. Whether the judgment should be reported in the Digest? **Yes***

Kuldip Singh J.(Oral)

Angrez Singh son of Matalli Ram, resident of village Dargah Shah, District Ropar, Punjab, has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.'), for transfer of the investigation in FIR No.80, dated 06.07.2012, under Sections 364, 302 of the Indian Penal Code, 1860, registered at Police Station Sadar Rupnagar, District Rupnagar, to some independent agency like C.B.I.

The FIR was registered on the written complaint filed by Angrez Singh, present petitioner addressed to the senior police officials for taking action against accused Bitu Ram son of Sucha

Ram, resident of village Makodi Khurd, District Ropar and Rajwinder son of unknown, resident of Lohar Majara , working as driver/servant with said Bitu Ram and three unknown persons, from village Makodi Khurd, who can be identified by Kashmiro Devi wife of Mewa Ram for kidnapping and murder of his daughter Anita Devi wife of Balwinder Singh. It was stated that Anita Devi, daughter of the complainant-petitioner was married with Balwinder Singh. His another daughter Asha Devi @ Komal was also married in the same village Makodi Khurd with one Jaspal Singh. It is alleged that after the marriage, Anita Devi was being teased and followed by accused Bitu Ram and Rajwinder. Anita Devi had disclosed this fact to her father (complainant) but he avoided confrontation and advised his daughter Anita Devi to avoid any type of contact with the accused. Even thereafter, accused did not desist and kept on following her and even visited the house of the complainant-petitioner in his absence and in the presence of his third handicapped daughter Ramesh Devi and harassed Anita Devi when she came to meet him (complainat).

On 29.11.2011 at about 5/5.30 p.m., his daughter Anita Devi had gone out for easing herself outside village Makodi Khurd. But Anita Devi did not return. After sometime, her mother-in-law Kashmiro Devi went out to see her and saw that accused Bitu Ram and Rajwinder along with three unidentified persons had come in a car of black colour and forcibly took Anita Devi in the said car. They also threatened Kashmiro Devi that she, her husband and her children would be killed in case she narrated the incident to anyone.

It was stated that Kashmiro Devi can identify the three unknown persons, if brought before her. Kashmiro Devi was scared. Initially out of fear, she did not narrate the incident to anyone. According to the complainant-petitioner, he had also visited the house of the in-laws of her daughter and found that Kashmiro Devi was too scared to talk to anyone. After his efforts, she narrated the entire incident to him. Next day, the complainant and his relatives visited Police Post Ghanoli but no action was taken. The complainant and his family members kept on searching for his daughter. On 10.12.2011, the dead body of his daughter Anita Devi was found in Bhakhra Canal, near Balsanda. The complainant alleged that accused Bitu Ram and Rajwinder along with three unknown persons kidnapped his daughter and then murdered her.

In the police proceedings, it is recorded that the complaint dated 04.03.2012 was received in Police Station for inquiry. It was marked to In-charge Police Post Ghanoli. It was found that on 10.12.2011, the dead body of Anita Devi was found floating in the Bhakhra canal near Balsanda. The statement of complainant-petitioner Angrez Singh, father of deceased Anita Devi was recorded and proceedings under Section 174 Cr.P.C. were initiated. The report of chemical examiner was received stating that Anita Devi died due to drowning. It was stated that there was no eye witness, who saw the incident. Both the accused were found innocent. It was further recorded that complainant-petitioner Angrez Singh had filed a CRM-M No.12508 of 2012 in the Hon'ble Punjab and Haryana High Court,

Chandigarh, and the same was disposed of on 11.05.2012. The inquiry was conducted but no solid evidence could be found regarding the death of Anita Devi. However, after obtaining the opinion of D.A.(legal), the present case was registered.

The copy of the petition bearing CRM-M No.12508 of 2012 titled as Angrez Singh vs. State of Punjab and others" shows that Angrez Singh had approached this Court for directing the official respondents to take necessary action on his complaint (Annexure P-3). The said case was disposed of on 11.05.2012 and passed the following order:

"This petition is being disposed of by giving a direction to the respondents to expeditiously look into the representation dated 04.03.2012 (Annexure P-3) filed by the petitioner and pass appropriate orders in accordance with law in view of the judgment of the Supreme Court in D.Venkatasubramaniam & Others v. M.K. Mohan Krishnamachari & Another 2009 (4) R.C.R. (Criminal) 318"

It was thereafter that the FIR was registered on 06.07.2012.

In the present petition, the complainant-petitioner states that the police was not taking any action on his complaint. He also narrates that ultimately he had approached this Court and after the orders of this Court, the FIR was registered. It was further stated by the complainant-petitioner that he and his family members and witnesses are being pressurized to compromise the matter. The complainant-petitioner further states that he has no faith in the local

police and the matter should be investigated by some independent agency like C.B.I.

In reply, the State took the plea that a thorough inquiry was conducted by a Special Team, constituted by Senior Superintendent of Police, Ropar, headed by Superintendent of Police (Detective), Ropar. In the inquiry, it was found that no wrong was committed by the accused in the present case. No strangulation marks were found and the cause of death was due to drowning. It was found that the present accused are not involved in this case. In the additional affidavit/status report, it was stated that recommendation for presentation of the untraced report before the learned Illaqa Magistrate have been made. The Senior Superintendent of Police, Rupnagar, District Rupnagar, had agreed with the report, meaning thereby that now the cancellation report is being submitted to the Court.

I have heard learned counsel for the complainant-petitioner, learned State counsel, learned counsel for the C.B.I and also learned counsel for the accused, who had appeared of his own and also carefully gone through the file.

First of all, it is to be seen as to whether a fair investigation has been conducted from all the angles or not? The reply is big 'NO'. Kashmiro Devi, mother-in-law of Anita Devi (deceased), is the eye witness of the kidnapping incident. It was stated that Bitu Ram and Rajwinder along with three unidentified persons had kidnapped Anita Devi. Later on, her dead body was

found floating in the Bhakhra canal. In this way, Anita Devi, who was aged 21 years was last seen with accused Bitu Ram, Rajwinder and three unidentified persons. In this case, there is an eye witness of the occurrence.

Initially, the police was reluctant to register the FIR. It was only after the orders of this Court that the present FIR was registered. The inquiry report and the stand of the State show that the Inquiry Officer has heavily relied upon the post-mortem report, which shows that there was no strangulation mark and deceased died due to drowning. It is to be noted that deceased Anita Devi was a young married lady aged only 21 years. No investigation was conducted as to why she will commit suicide. The mere fact that her death is because of the drowning and there was no injury mark, does not mean that it is natural death. It could be either suicidal or homicidal. Even when a person is pushed in the canal, he dies of drowning. It appears that in the present case no effort was made to cross check the statement of Kashmiro Devi.

During the pendency of the present proceedings, when this Court questioned the State to enquire as to whether the accused own black colour car or not then the learned State counsel, on instructions from ASI Krishan Lal had conceded that the said accused Bitu Ram had a black colour car. However, it was stated that on the day of occurrence, the said car was in the workshop for repair. When further questioning was done about the proof of the car being in the workshop on the day of crime, it was stated that the original

receipt of the workshop has been annexed with the cancellation report. Therefore, this Court decided to examine as to whether the said black colour car was actually in the workshop on the day of occurrence and whether any such major repair, was required/needed to detain the car in the workshop.

On the next day of hearing, the original invoice was produced regarding the repair of the car, which revealed that it was issued seven months later. No invoice of the date when the car was delivered, was produced. Therefore, this Court entertains the doubt that there is possibility of entry of data on a later date. Thus, the police was directed to get the computer of the Automobile Agency checked from the computer expert to find out as to when the data pertaining to the original invoice was entered in the computer. The case was accordingly adjourned.

On the next date of hearing, the statement of Alok Gupta, owner of R.M. Automobiles, Ropar was produced, in which it was recorded that the police officer from Cyber Crime had visited his workshop on 08.01.2015 and on 09.01.2015 and checking of his computer was done. The printouts were also taken from online portal of Tata Motors, through which the computerized record of the vehicles was kept. It was also stated that no document regarding vehicle bearing registration No.HR-70-4843 was found. Therefore, this Court found that the previous invoice dated 31.07.2012 produced before the police to show that the said vehicle was in the workshop of R.M. Automobiles for repair on the date of crime, is fake. It was also

found that Investigating Officer did not try to check out that the invoice of the vehicle is fake. Therefore, this Court found that the proper investigation is not being carried out.

It is disheartening to note that when a query was put, a fake invoice was sought to be put forward apparently to establish the plea of alibi of accused by saying that the said black colour vehicle bearing registration No.HR-70-4843 was in the workshop of R.M. Automobiles, Ropar, on the date of alleged crime. It gives indication that one or the other officer of the Investigating Agency is also actively involved in ensuring that no proper investigation is done and the case is hushed up.

There is another aspect of the case. The complainant-petitioner (father of deceased Anita Devi) had specifically stated that accused Bitu Ram and Rajwinder used to harass his daughter. He also stated about the incident of both the accused entering his house and harassing her daughter Anita Devi (deceased) in the presence of her handicapped daughter. No effort was made to verify from the handicapped daughter of the complainant-petitioner as well as from him regarding the said incident.

The complainant-petitioner also specifically stated that both the accused used to follow and tease her daughter Anita Devi. The police never tried to investigate from the angle as to whether Anita Devi was pushed/thrown in the Bhakhra canal or she committed suicide and if she committed suicide, what were the reason for the same? The fact that accused had tried to fabricate the

documents to take the plea of alibi, goes to show that needle of suspicion is pointed towards them.

The fact that forged documents were shown to this Court even during the pendency of the petition to defeat the case of the complainant-petitioner and show that the vehicle claimed by the complainant to be used in the kidnapping of Anita Devi (deceased), was in the workshop on the date of alleged crime, goes to show that no fair investigation is possible from Punjab Police.

Therefore, keeping in view the extra ordinary circumstances, it is a fit case, which should be handed over to the Central Bureau of Investigation (C.B.I.) to investigate into the matter and submission of the final report to the Court of competent jurisdiction.

Learned counsel for the C.B.I. has argued that C.B.I. is already over burdened. Therefore, it has little time for investigation. It has also been argued that ordinarily the case should not be handed over to the C.B.I. for investigation.

I agree with the contention of learned counsel for the C.B.I. Ordinarily the case should not be sent to the C.B.I., which is already over burdened with work. However, I am of the view that in this case, the situation is extra ordinary, where a young married lady aged 21 years has died. The investigating Agency is trying to hushed up the case. Initially, the FIR was not registered. The same was registered only after the orders of this Court and even thereafter, merely by going through the medical record, the Investigating Agency

jumped to the conclusion that it is a case of drowning, without examining the other aspects of the case as narrated above.

In view of the foregoing discussion, the present petition is allowed. The investigation of this case is withdrawn from the Punjab Police and transferred to the C.B.I. The C.B.I. is directed to register the fresh FIR and investigate the case from all angles and submit the final report before the concerned court. The C.B.I. is further directed to investigate as to who are involved in the creation and use of the fake invoice of vehicle bearing registration No.HR-70-4843, showing that the vehicle was in the workshop of R.M. Automobiles, Ropar for repair and they be also charge-sheeted accordingly. Needless to say that Punjab Police shall not take any further step in pursuance of the investigation already concluded.

The present petition is allowed accordingly.

March 11, 2015
sarita

(KULDIP SINGH)
JUDGE