

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

CRM-M No.34355 of 2014
DATE OF DECISION:13.01.2015

Shyan Mohammad

...Petitioner

Vs.

State of Haryana & ors.

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. S.S.Sahu, Advocate,
for the petitioner.

Mr. Mukesh Kaushik, DAG, Haryana.

Mr. Vishu Godara, Advocate, for
Mr. Sumit Goyal, Advocate,
for respondent No.5-CBI.

JITENDRA CHAUHAN, J.(ORAL)

1 Having failed twice earlier, through this third petition a direction has been sought to the State of Haryana to hand over the investigation of the case FIR No.100 dated 11.12.2011, under Sections 279/304-A IPC (Sections 302/376 IPC added lateron) registered at P.S Nathusary Chopta, District Sirsa to CBI.

2 Learned counsel for the petitioner contends that initially an FIR No.100 dated 11.12.2011 was registered under Sections 279/304-A of the Indian Penal Code at P.S. Chopta, District Sirsa. On the receipt of FSL report confirming that rape has been committed upon the minor daughter of the petitioner, offences under Sections 302/376 IPC were added lateron.

Learned counsel contended that the Haryana Police is not fairly investigating the case and is trying to destroy the prosecution case with the connivance of the culprits. Learned counsel further contends that the petitioner is in possession of certain oral and documentary evidence regarding complicity of the culprits but the police is not taking note of the same that investigation of this case be handed over to the CBI or any other independent agency.

3 On the other hand, the learned State counsel contends that the police is fairly investigating the case with modern techniques and is trying to solve the mystery of this case. He contends that apprehension of the petitioner is misconceived.

4 The learned CBI counsel cites *State of West Bengal & others Vs. Committee for Protection of Democratic Rights, West Bengal & others 2010(3) Supreme Court cases 571* wherein the Hon'ble Supreme Court framed the guidelines for entrusting the investigation of cases to the CBI.

5 This Court has scrutinized the case file carefully with the able assistance of learned counsel for the parties and heard them at length.

6 Earlier also the petitioner had approached this Court by filing CRM-M No.13680 of 2012, dismissed the petition vide order dated 04.02.2013 with liberty to approach this Court again if the investigation is not concluded early. Thereafter another petition was filed CRM-M No.21510 of 2013 in which this Court vide order dated 25.01.2014 directed the State to appoint an IPS Officer to investigate the case within fifteen days and further directed to complete the investigation within three months.

7 The State has complied with the aforesaid orders of this Court by appointing Superintendent of Police Sirsa as an Enquiry Officer to investigate the case. At present, the investigation has been conducted by the

said IPS Officer. The petitioner has again filed this petition third time.

8 On 11.12.2011, the petitioner got registered an FIR under Sections 279/304-A IPC at Police Station Nathusary Chopta, District Sirsa, against some unknown vehicle and unknown driver asserting that her daughter died in a road accident. Post mortem examination of deceased Suman @ Baby was carried out. Her clothes, vicera, swaths and heart were sent for examination to FSL, Madhuban, Karnal. Laboratory report dated 14.02.2012, were received on 03.03.2012, which confirmed the presence of the human semen and sper matozoa on salwar of the deceased, vaginal swab and slides. After obtaining opinion of the doctor Section 302/376 IPC was added. Special Investigation Team (herein referred to as 'the SIT') was constituted by the Superintendent of Police Sirsa. Various persons were interrogated on 20.09.2012 by the SIT. The DNA tests of three suspects namely Mashkat, Ahmad Ali and Hasan Khan was carried out. As per FSL report the DNA profile of seminal stains on salwar of deceased Suman was not matching with the DNA profile of three suspects. Some JCB operators were also joined in the investigation. Suspected accused Salma and Hasan were arrested in this case on 20.11.2012, who were lateron declared juvenile. Challan against both these accused was presented in Court and both are being tried by the Principal Magistrate, Juvenile Justice Board, Sirsa. Mashkat, Ahmad Ali and Hasan Khan, were joined in the investigation but was declared innocent. On 19.11.2013, the SHO reached the village and made enquiries from various persons. The Superintendent of Police, Sirsa himself joined some persons in the investigation of this case. In his latest status report dated 08.01.2014, filed in Court, the Superintendent of Police, Sirsa stated that polygraph test on the suspects namely Hasan Khan, Salma,

Ahmad Ali, Mujaffar Din and Muskat Ali had been got conducted, according to which report, the responses of suspects appeared to be truthful. Ultimately, an untraced report dated 06.01.2015 regarding Commission of Crime under Sections 302, 376, 201, 120-B IPC prepared by the SHO, Nathusary Chopta is being sent to the Court of Illaqa Magistrate, Sirsa through proper channel for necessary approval.

9 In the affidavit dated 08.01.2015, the Superintendent of Police, Sirsa, further stated that in case any clue is found against the unknown culprits in future, further investigation in this case will be conducted as per law. From the gist of the investigation, brought before this Court by filing affidavits by senior officers of the police, it cannot be said that the police is not investigating the case properly or conniving with culprits. Two persons are being tried by the Board.

10 From the investigation conducted by the police, this Court is satisfied that it is not a fit case to entrust the investigation of this case to the CBI. The apprehension that the police is conniving with some culprits is unfounded and baseless. In case the petitioner furnishes fresh documents regarding complicity of any suspected culprit, before the Superintendent of Police, Sirsa, the SIT shall consider the same and may take necessary steps as per law.

11 In these circumstances, there is no merit in this petition, which is dismissed.

13.01.2015
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(JITENDRA CHAUHAN)
JUDGE