

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 30.08.2016

PRONOUNCED ON: 02.09.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Cr1.O.P. No.19000 of 2016

Pushpam

Petitioner

vs.

1 The Home Secretary
Home Department
Secretariat
Fort St. George, Chennai 600 009

2 The Director General of Police
Mylapore, Chennai 600 004

3 The Additional Director
Central Bureau of Investigation
Rajaji Bhavan, Chennai

4 The Inspector of Police
Central Railway Police Station
Egmore, Chennai 600 008

5 The Inspector of Police
F-3 Nungambakkam Police Station
Chennai 600 034

6 The Assistant Commissioner of Police
Nungambakkam Saragam
Chennai

7 The Commissioner of Police
Chennai City
Vepery, Chennai 600 007

Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. seeking a direction to withdraw the case in Crime No.629 of 2016 from the sixth respondent and entrust the same to the third respondent, an independent agency, preferably, CBI, to conduct

re-investigation in respect of Crime No.629 of 2016 on the file of the sixth respondent herein.

For petitioner	Mr. Ramaraj
For respondents	Mr. C. Emalias
	Additional Public Prosecutor

ORDER

This Criminal Original Petition is filed seeking a direction to withdraw the case in Crime No.629 of 2016 from the file of the sixth respondent and entrust the same to the third respondent, an independent agency, preferably, Central Bureau of Investigation, to conduct re-investigation in respect of Crime No.629 of 2016 on the file of the sixth respondent herein.

2 On 24.06.2016, around 6.40 a.m., a gory incident took place in Platform No.2 of Nungambakkam Railway Station in which one Swathi, a girl aged around 24 years, who was waiting to board a local EMU to go to office, was fatally attacked, in connection with which, on the complaint of one N.Raghupathi, Commercial Supervisor in the Southern Railway, the Inspector of Police, Railway Police Station, Egmore, Chennai, registered a case in Crime No.170 of 2016 under Section 302 IPC and took up investigation. During the course of investigation, he examined several witnesses, including the father of the deceased Swathi.

3 On the orders of superior police officers, the case was transferred from the file of the Railway Police Station, Egmore, Chennai, to the file of the Assistant Commissioner of Police, F-3, Nungambakkam Police Station and was re-registered as F-3, Nungambakkam P.S. Crime No.629 of 2016. The Assistant Commissioner of Police, F-3, Nungambakkam Police Station is the present Investigating Officer.

4 During the course of investigation, the Investigating Officer examined several witnesses and ultimately, he zeroed in on one Ramkumar of Tirunelveli. When the police went to apprehend him in Tirunelveli on 01.07.2016, it is stated that he attempted to commit suicide by slitting his throat and that he was taken to a hospital for first aid and thereafter, was admitted to the Government Hospital, Tirunelveli, as an in-patient. He was placed under formal arrest on 02.07.2016 and at present, he is in judicial custody.

5 While so, Pushpam, his mother, has filed the present petition alleging that the investigation is not proceeding on the right lines and that her son Ramkumar is being falsely implicated by the police and hence, she is seeking transfer of

investigation to the Central Bureau of Investigation.

6 At this juncture, it is felicitous to point out that in *State of West Bengal vs. The Committee for Protection of Democratic Rights* [(2010) 3 SCC 571], a Constitution Bench of the Supreme Court has laid down the parameters for transfer of a case from the State Police to the Central Bureau of Investigation. Paragraphs 70 and 71 of the said judgment are worth quoting:

"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 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. Insofar as the question of issuing a direction to 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 extraordinary 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 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.

71 In *Minor Irrigation and Rural Engg. Services, U.P. vs. Sahngoo Ram Arya*, this Court had said that an order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency. We respectfully concur with these observations."

7 In the light of the aforesaid parameters, this Court

has to see whether the allegations levelled by the petitioner herein in her affidavit, would warrant transfer of investigation, as prayed for by her.

8 When the matter came up for admission on 30.08.2016, Mr.C.Emalias, learned Additional Public Prosecutor submitted that the police are not filing any counter affidavit and instead, he placed the entire case diary for the perusal of this Court and submitted that, if this Court is not satisfied with the investigation, it can transfer the case to the Central Bureau of Investigation, as prayed for by the petitioner.

9 Under Section 172 Cr.P.C., this Court has the power to peruse the case diary and the contents of it cannot be made public for obvious reasons. Hence, this Court meticulously plodded through the case diary in order to find out if the allegations levelled by the petitioner in her affidavit, bear substance.

10 Before delving into the allegations levelled by the petitioner, it may be necessary to give a brief sketch of the investigation that has been done so far, by the prosecution.

11 On the date of murder of Swathi, the Railway Police have recorded the statement of several persons, of whom, the statement of one "X" assumes significance. The said "X" has given the description of the assailant and has also stated about the clothes worn by the assailant. The police had overwhelming evidence on 24.06.2016 that the assailant was a loner and that he carried a bag. The weapon that was used for the attack by the assailant, was recovered near Nungambakkam Railway Station on the same day and it was identified by "X". The police also recovered the CCTV footages captured in a camera installed in a building near Nungambakkam Railway Station, which provided sufficient materials for the police to understand the profile of the assailant. The police also noted that the mobile phone of the deceased Swathi was missing.

12 The breakthrough came to the police on 01.07.2016 via one "Y" that one Ramkumar of Tirunelveli, staying in A.S. Mansion in Choolaimedu, has not been seen since 24.06.2016. The police conducted a search of the room in A.S.Mansion where Ramkumar was staying and recovered several incriminating materials, including the bag and blood stained clothes. On the night of 01.07.2016, on information from the Madras Police, the Tirunelveli Police attempted to apprehend Ramkumar at his residence. At that time, it is stated that he slit his throat himself, as stated supra. Pursuant to the arrest on 02.07.2016,

the police recovered Swathi's mobile phone on the disclosure made by Ramkumar at Tirunelveli.

13 This Court is not discussing the other evidence, which the police have gathered as against Ramkumar, inasmuch as, that would result in undue prejudice to the investigation. Suffice it to say that Test Identification Parade was conducted by the IX Metropolitan Magistrate, Saidapet, Chennai on 12.07.2016, within 15 days from the date of arrest, during which, some witnesses have identified Ramkumar as the assailant. At the request of the police, Section 164 Cr.P.C. statements of six witnesses have also been recorded by the XI Metropolitan Magistrate, Saidapet.

14 In the light of the above, it is imperative for this Court to meet the various allegations levelled by the petitioner in her affidavit.

15 It is alleged by the petitioner that the sickle that was seized by the police is from Karnataka and that the real culprit could be one Bilal Sithick, with whom, Swathi was in love. It is further alleged by the petitioner that a special police team had gone to Karnataka for investigation and that one Tamil Selvan appeared in a TV channel and stated that he could identify the real culprit.

16 From the case diary, it appears that Bilal Sithick is a friend of Swathi, as both of them have undergone a computer course together and on coming to know of Swathi's murder, he had come to her house. The police have recorded not only his Section 161 Cr.P.C. statement, but also his statement under Section 164 Cr.P.C. The petitioner's allegation that Swathi had converted to Islam and married Bilal Sithick and ergo, she has been murdered, etc. are, in the considered opinion of this Court, her figment of imagination and as such, deserve no credence.

17 The petitioner has relied upon news items which have appeared in the print media and other media sources, which cannot form the basis of transferring a case to the Central Bureau of Investigation. There is no credible material to show that a special team of police officers had gone to Karnataka to investigate the case. Even the statement of Tamil Selvan has been recorded by the police, which does not, in any way, support the case of the petitioner. The police have also collected sufficient materials to show that Ramkumar has been stalking Swathi for over a period of time prior to the date of occurrence, viz., 24.06.2016.

18 In the typed set of papers, the petitioner has enclosed

a number of newspaper clippings in order to show that there are several loose ends in the investigation and therefore, the case deserves to be transferred to Central Bureau of Investigation.

19 In a free State like ours, investigative journalism and media trials are inevitable and cannot be and should not be curbed. Any unwarranted attempts to gag the fourth estate will tantamount to driving the last nail in the coffin for democracy. It is true that in the guise of investigative journalism, some pressmen may exceed the Lakshman Rekha. However, like the proverbial swan, one should take the good from media coverage and learn to ignore the bad, however, hurting it might be. Over the years, the instrumentalities of the State like the judiciary and police have matured and learnt not to be swayed by subjective opinions of individuals expressed via press and social media.

20 From a reading of the case diary, this Court finds that though the Investigating Officer has his ears to the ground, yet, he has so far proceeded on the basis of objective materials obtained during investigation.

21 Mr. Ramaraj, learned counsel for the petitioner submitted that the nature and the number of injuries sustained by Swathi will show that more than one person must have attacked her, whereas, the police are proceeding on the premise that Ramkumar alone has attacked her.

22 The two components of a crime are mens rea and actus reus. It is the mens rea which decides whether a particular case is a murder or culpable homicide simpliciter. What runs in a man's mind normally manifests in his action. Thus, we use the actus reus to gauge the intention of the offender. The nature and the number of injuries on the body of the victim are some of the indices indicating the ferocity harboured in the mind of the offender. The argument of Mr. Ramaraj may stand to logic, but, life is not always logic. As Oliver Wendell Holmes, Jr., a former Associate Justice of the US Supreme Court, pithily remarked, "the life of law is experience, not logic." There is an oft-quoted analogy employed by detractors of logicians which may aptly answer Mr. Ramaraj's contention. When a door is half closed, it is half open; this does not mean that, if it is fully closed, it is fully open. A single stab injury in the body of a victim can lead to an irresistible inference that the stab injury has been inflicted by one person. But, it is not axiomatic that if more than one stab injury is found, more than one person is involved in the attack. Therefore, to say that if more than one injury is found in the body of the victim, more than one person is involved in the attack, is clearly

misconceived. It all depends upon the facts and circumstances of each case and a straitjacket formula cannot be applied in this regard.

23 The petitioner has further alleged that Swathi's father had requested the Hon'ble Chief Minister of Tamil Nadu not to enquire his family. There appears to be no basis for this allegation, because, the police have recorded the statement of Swathi's father and he has actively assisted the police during investigation.

24 It is the further allegation of the petitioner that instead of apprehending one Muthukumar, the police have apprehended her son Ramkumar and foisted a false case against him. The petitioner has not made any allegation of mala fides against the Investigating Officer in her affidavit. The case diary shows that Judicial Magistrate-I, Tirunelveli, had gone to the Government Hospital, Tirunelveli, where, Ramkumar was admitted, for the purpose of remand. When questioned by the Judicial Magistrate-I, Tirunelveli, Ramkumar has stated that he himself had cut his throat in order to avoid arrest, which has been recorded by the said Magistrate. In *Girja Prasad vs. State of Madhya Pradesh*, [(2007) 7 SCC 625], the Supreme Court has quoted with approval, the following passage from the earlier judgment in *Aher Raja Khima vs. State of Saurashtra* [AIR 1956 SC 217] which will be apt in the present case.

"40. The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not judicial approach to distrust and suspect him without good grounds therefor. Such an attitude could do neither credit to the magistracy nor good to the public. It can only run down the prestige of the police administration."

25 The learned counsel for the petitioner placed strong reliance on the judgments of the Supreme Court in *Babubhai vs. State of Gujarat* and others (2010) 12 SCC 254 and *Pooja Pal vs. Union of India* and others [(2016) 3 SCC 135] in support of his submission that the case should be transferred to the Central Bureau of Investigation.

26 This Court cannot have any quarrel with the proposition of law laid down by the Supreme Court in the above said two judgments. It is seen that in both the cases, investigation was conducted in a very perfunctory manner and final reports were filed.

27 In fact, in *Babubhai's* case (supra), there is a finding

by the High Court that the investigation in that case was not fair and that it was impartial. Likewise, in Pooja Pal's case (supra), the deceased was a sitting M.L.A. of the opposition party and the State Police had misdirected the investigation deliberately to protect certain individuals. In those circumstances, the Supreme Court scrapped the entire investigation and ordered de novo investigation with the Central Bureau of Investigation. In the case at hand, the investigation is at a very early stage and the facts of this case are different from the facts obtaining in the aforesaid two cases.

28 Thus, in the light of the facts and circumstances catalogued above and bearing in mind, the parameters laid down by the Constitution Bench of the Supreme Court in The Committee for Protection of Democratic Rights case qua transfer of investigation of a case from the State Police to the Central Bureau of Investigation, this Court does not find any infirmity in the investigation being conducted by the Assistant Commissioner of Police, F-3, Nungambakkam Police Station, warranting transfer of the case to Central Bureau of Investigation.

As a sequel, this Criminal Original Petition is liable to be dismissed and is accordingly dismissed. It is made clear that whatever that is stated above is only for the limited purpose of deciding this petition and it shall not, in any way, prejudice either side.

Sd/-
Assistant Registrar(CS II)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

cad

To

- 1 The Secretary
Home Department
Secretariat, Fort St. George
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- 2 The Director General of Police
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WEB COPY

- 3 The Additional Director
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- 9 The Public Prosecutor
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- 1 cc to Mr.P.Ramaraj, Advocate, sr.49996

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