

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No. M-15971 of 2014

Date of decision : January 18, 2016

Nawin Rajp

....Petitioner

versus

The State of Punjab and others

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Avi Singh, Advocate and
Mr. Lalit Thakur, Advocate, for the petitioner

Mr. Sidakmeet Sandhu, AAG, Punjab
for respondents no. 1 and 2

Mr. Vikas Bahl, Senior Advocate with
Mr. Ramandeep Singh, Advocate and
Mr. Manbir Singh Bath, Advocate, for respondent No. 3

Fateh Deep Singh, J. (Oral)

This is a petition under section 482 of the Code of Criminal Procedure (in short, Cr.P.C.) read with Article 227 of the Constitution of India preferred by one Nawin Rajp seeking directions for expediting and monitoring the investigations and failure of the police to conduct custodial

interrogation.

The brief facts that needs to be reproduced are that petitioner claims to be son of late Kartar Chand Rajp who happened to belong to Banga, Punjab and had left behind a house denoted by House No. 2470, Rajp House, Gandhi Nagar, Banga, Punjab. It is the claim of the petitioner that he along with other heirs have collectively inherited the estate of his deceased father and that his mother Tejo Kamal Rajp died in December, 2003 and he was the eldest son in the family. The precise allegations stems out from his complaint addressed to the NRI Cell leading to the registration of the FIR Annexure P/1. Brief allegations as have been brought to the notice of the Court from the arguments and the records of the case are that the accused persons namely Kulwinder Singh alias Laddi, Kamlesh Devi, Jagjit Singh all residents of Banga, Punjab and Prem resident of Pune, Maharashtra have conspired amongst themselves and have fraudulently prepared and forged power of attorney dated 23.10.1970 of petitioner's mother namely Tejo Kamal favouring accused Prem and on the basis of the said forged power of attorney, Kulwinder Singh alias Laddi and others have forged an agreement to sell this house dated 12.4.1996 in his favour and thus has sought to allege that the accused have by this criminal conspiracy forged and fabricated documents dishonestly and cheated them of their valuable property.

The stand of the State is of admission that the FIR in question

was got registered but subsequently repeated inquiries were held into the matter and it was made out that it was a case of pure civil nature and that the petitioner-complainant had not cooperated with the investigations by providing admitted signatures/thumb impressions of Tejo Kamal so as to enable the investigations to progress and held there was no forgery or fabrication. Thus, this Court vide orders dated 28.1.2015 has directed the petitioner-complainant to provide the following original documents:-

- “1. Latest Passport of Mrs. Tejo Kamal Rajap bearing her photograph, Signature/Thumb Impression.
2. Any identity card, driving licence of Mrs. Tejo Kamal Rajap issued by the Government of United Kingdom bearing her signature/thumb impression.
3. Specimen signature/thumb impression of Mrs. Tejo Kamal Rajap at the time of opening account in the bank.
4. Provide the address and E-mail of your brother Parveen Rajprohit.
5. Please provide pedigree the table of Mr. Salagram.”

As has been contended by the State counsel, till today nothing tangible by way of evidence has been accomplished by the complainant in this regard and that is how the investigations have hit a dead end and thus giving grouse to the petitioner to invoke the jurisdiction of this Court by way of this petition.

Heard Mr. Avi Singh, Advocate and Mr. Lalit Thakur, Advocate, for the petitioner, Mr. Sidakmeet Sandhu, AAG, Punjab for respondents no. 1 and 2 and Mr. Vikas Bahl, Senior Advocate with Mr. Ramandeep Singh, Advocate and Mr. Manbir Singh Batth, Advocate, for respondent No. 3 and perused the records.

From the arguments it permeates that the very question of legality and validity of power of attorney dated 23.10.1970 and agreement to sell dated 18.9.1996 are the rallying points of this controversy. Though counsel for the petitioner to hammer home his point has sought to place reliance on **State of West Bengal vs Committee for the Protection of Democratic Rights, West Bengal & Ors, (2010) 3 SCC 571; R.S.Sodhi, Advocate vs State of U.T. & Ors. (1994) Supp (1) SCC 143; Kashmeri Devi v. Delhi Administration & Anr. 1988 (Supp) SCC 482, Dinubhai Boghabhai Solanki v. State of Gujarat & Ors. (2014) 4 SCC 626; Babubhai v. State of Gujarat & Ors.(2010) 12 SCC 254; Balbir Kaur v. State of Punjab, 2014 SCC Online P&H 23270 and Rabia @ Mamta & Anr. V. NCT of Delhi & Ors., W.P.(Crl) 23496 of 2015, decided on 3.12.2015** that the courts under the exercise of powers under Article 21 of the Constitution of India can protect the persons of their lives and personal liberties and the fact that by way of writ petition a party can come to seek aid of the court and the courts are supposed to take notice of such an injury to the petitioner and has sought to assert that there is urgency and

promptness to dole out justice to the Non Resident Indian who is denuded of his legitimate right to property and thus there is a need for the courts to ensure that there is judicious, fair, transparent and expeditious compliance of the basic rule of law and that fair investigations is the very hall-mark of the provisions of the law.

The arguments of the petitioner side have been controverted with much vehemence by counsel for respondent no. 2 who has placed reliance on **Sakiri Vasu vs State of Uttar Pradesh and others, 2008(1) R.C.R. (Criminal) 392; Jaswinder Kaur vs State of Punjab and others, 2014(1) R.C.R.(Criminal) 569 and Md. Ibrahim & Ors vs State of Bihar & Anr. 2009 (4) R.C.R. (Criminal) 369.**

Appreciating the arguments of the two sides, it is not in any manner put to question by any of the sides that consequent upon a report having been lodged by the petitioner as to the allegations of commission of cognizable offence by the accused, the police has prompted into taking a legal recourse in view of the Hon'ble Apex Court's law laid down in **Lalita Kumari vs State of U.P., 2013(4) R.C.R. (Criminal) 979.** However, now a million dollar question arises before this Court whether in such an eventuality as has been detailed above can Court come to the aid of the petitioner even to order further investigations which are already under way and in which the complainant has failed to provide any tangible evidence to

prima facie pad his allegations against the accused. It is well settled law reference of which can be taken note of in **Mohit alias Sonu and another vs State of U.P. and another, 2013(5) Law Herald (SC) 3835** where the Hon'ble Apex Court has laid down that when there is specific relief provided under the Statute then provisions of section 482 Cr.P.C. should not be resorted to. Adverting to the instant case, the Hon'ble Apex Court in catena of case law, reference of which can be taken note of in **Aleque Padamsee and others vs Union of India and others, 2007(3) R.C.R. (Criminal) 815** has detailed the ambit of sections 154 and 156 Cr.P.C. holding that if any person is aggrieved by inaction of the police officials in registering FIR, the modalities contained in section 190 Cr.P.C. read with section 200 Cr.P.C. are to be adopted and observed and secondly it is open to any person aggrieved by action of the police official to adopt the remedy in terms of these provisions and by placing reliance upon **Sakiri Vasu (supra)** where it has been observed as under:-

“ 26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under section 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under section 482 Cr.P.C. Moreover he has a further remedy of

filing a criminal complaint under section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?”

Thus from this all, it is emphatically clear that under the provisions of sections 154(3) and 156(3) of the Cr.P.C. the Magistrate has ample powers not only to direct registration of an FIR as well as to ensure appropriate investigations for which purpose he can monitor the investigations to ensure that the investigations are done in the right earnest. Thus, it needs to be highlighted here that High Court should discourage such practice of filing of writ petitions or petitions under section 482 Cr.P.C. purely, on the allegations that there was legitimate grievance of the petitioner when he has been given ample armaments in the court itself.

Adverting back to the instant case, the police has already registered an FIR at the instance of the petitioner and the only grievance is that there is no further investigations into the matter and as is reflected from the records and is well highlighted in the arguments of the State that there has been total non-cooperation of the petitioner in supplying the requisite essential documents enabling the investigating agency to come up to justifiable conclusion over the allegations of forgery and fabrication. To the very query of this Court, counsel for the petitioner squarely accepts that petitioner has not even invoked the jurisdiction of the civil court to challenge these two documents i.e. agreement to sell and the power of

attorney and in the absence of any comprehensive finding of a civil court and the fact that after the death of the principal the power of attorney becomes otiose and useless and that any act on the basis of such a document subsequent to the death of the principal does not confers any right, title or interest in the estate in favour of anyone. Further-more mere agreement to sell does not confer title upon a party and therefore, even by that analogy the petitioner has a legitimate reason to invoke the jurisdiction of the civil court.

Further more it has been very well laid law in **Babubhai Jamnadas Patel vs State of Gujarat & Ors., 2009(4) R.C.R. (Criminal) 271** that under section 482 Cr.P.C., Courts should dehor monitoring of investigations by the police and it is only in exceptional cases it is called for in the public interest or for advancement of course of justice which essential requirements are missing in the case before this Court.

In the totality of what has been discussed and detailed above, this Court does not feels inclined to show any indulgence to the petitioner to redress his feigned grievance and thus, the present petition being wholly without any merits, stands dismissed.

January 18, 2016
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(Fateh Deep Singh)
Judge