

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

**CRM-M-19944 of 2016 (O&M)
Date of Decision: December 23, 2016**

Kulwinder Singh and another ...Petitioners

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Anmol Rattan Sidhu, Senior Advocate
with Mr. G.S. Ghuman and Mr. Pratham Sethi
Advocates for the petitioner.

Mr. Gurveer Sidhu, AAG, Punjab.

Mr. Sumeet Goel, Advocate
Standing counsel for CBI/respondent No.2.

FATEH DEEP SINGH, J.

This is a petition preferred by the petitioners trying to invoke the jurisdiction of this Court by having resort to provisions of Section 482 Cr.P.C for transfer of investigations.

The factual matrix of utmost necessity for better understanding and appreciation of the whole scenario as is trickling from the relative submissions of the two sides and is not at all a question put to doubt that an FIR No.47 dated 18.5.2016 under Sections 302,307,427,148,149 IPC read with Section 25 of the Arms Act 1959 was registered at Police Station Punjab Agricultural University, Ludhiana. The brief crux of the allegations contained therein are that petitioner No.2 as per

this petition happens to be a Sikh preacher with mass following amongst the community and which led to feeling of hatred and ill will being diametrically opposed to the interests and ideology of the accused side. It is alleged that on 17.5.2016 petitioner No.2 was on his way and while in the jurisdiction of Police Station, Punjab Agricultural University, Ludhiana his vehicle was waylaid and was sprayed with bullets. As the story goes one of the occupants of the vehicle died in this attack where as petitioner No.2 managed to escape leading to registration of present FIR on the statement of petitioner No.1. It is the claim of the complainant side that in this attack certain persons were named to be the real perpetrators and on the basis of this a vehicle make TATA Safari bearing registration No.PB-23-J-0015 was taken into Police possession which is registered in the name of Baba Harnam Singh Dhumma. The brief accusations which form the very foundations of this petition are that Police has not pursued the matter in the right earnest and, thus, has come up before this Court in this petition seeking investigations by Central Bureau of Investigation/respondent No.2 as they have sought to claim having lost faith in respondent No.1.

The stand of the respondent/State of Punjab by way of status report is to the effect that immediately the FIR was registered pertaining to this occurrence and the vehicle involved in the occurrence has been taken into Police possession and examined by experts and the site of the occurrence has duly been forensically examined and necessary appropriate action has been initiated and upon completion of investigations challan against 14 persons have been already submitted in a Court of law and that it is the complainant side which is not fully cooperating in the

investigation and denied the allegations and have claimed that they have interrogated every person against whom the complainant side has sought to raise suspicion including head of the sect of accused side and who too was questioned and it was stated that Damdami Taksal is running an Educational Institution having numbers of vehicles and which are in the name of the head and, thus, the students often use such vehicles for the purpose of the Sikh Educational Organisation and, thus, no attribution can be made against its head without there being a positive evidence.

Appreciating the submissions of the two sides and on perusal of records, though with all force and vehemence Mr. Sidhu learned Senior counsel for the petitioners has sought to level insinuations over the manner of investigations the underlying political and social causes for lopsided investigations and to reiterate the fact that even after filing of report under Section 173 Cr.P.C this Court has wide powers to order reinvestigation, fresh investigation and has sought support from the law laid down in ratios *State of West Bengal and others vs. The Committee for Protection of Democratic Rights West Bengals and others 2010(3) SCC 571; Narmada Bai vs. State of Gujrat 2011(5) SCC 79; Prakash Kadam vs. Ramprasad Vishwanath Gupta 2011(6) SCC 189; Rashmi Behl vs. State of Uttar Pradesh 2016(1) SCC (Cri) 145 and Dharam Pal vs. State of Haryana 2016(4) SCC 160.*

The contentions of the petitioner's side has sought to be rebutted with much force by Mr. Gurveer Sidhu, learned State counsel though learned counsel on behalf of respondent No.2/CBI did not make any paramount participation to enlist his submissions and the learned State

counsel has cited ratios K.V. Rajendran vs. Superintendent of Police, CBCID South Zone, Chennai and others 2013(12) SCC 480; Jagjit Singh Chahal vs. State of Punjab; others 2015(4) RCR (Criminal) 834 and Sakiri Vasu vs. State of UP and others 2008(1) RCR (Criminal) 392 this Court

This Court has summoned the records from the concerned Court below from which it is much in abundance evident that prosecution against 14 persons have been lodged regarding this occurrence and who all have been arrested and put to trial for charges under Sections 302/307/427/212/216/148/149/120-B IPC read with Section 25 of the Arms Act. From the cursory look at the records it is decipherable that all relevant articles/evidence subject matter of vital importance in the investigation and at the trial appears to have been taken into police possession and form part of report under Section 173 Cr.P.C. Learned counsel for the petitioners to the very query of the Court could not impress by any means upon the mind of this Court how or on what score the investigation is lacking. Evidently, at the very onset of the FIR there are allegations that a crowd of persons had surrounded the vehicle of the victim side and sprayed bullets and out of which during the course of investigation on revelation of identities these persons who are facing trial have been put up as an accused. Contention of the learned State counsel that on more than four occasions notices have been issued by the Police under Section 160 Cr.P.C and none from the side of the complainant has come forward to further support their stand and after receiving the report of the experts the challan has been submitted. Even though, with much vehemence learned State counsel has sought to allay the

fact that nor even the wife of the deceased Kulwant Kaur has sought to assist the investigation and rather head of the Educational Institution Baba Harnam Singh Dhumma has been called for investigation for more than five occasions and nothing tangible has come in the evidence against him. In the light of this what has been come on the records and seeking support from *Virender Prasad Singh vs. Rajesh Bhardwaj and others 2010(4) RCR (Criminal) 93* this Court holds the view that apparently investigation of this case is complete from all angles and much evidence and material has been brought in the report under Section 173(2) Cr.P.C. On behalf of the complainant not much could be brought to the notice of this Court which could show that certain loopholes have come about intentionally in the prosecution story undermining the prosecution case which necessitates further or fresh investigation and that real culprits have been left off the hook. Thus, apparently nothing is discernible with the investigation conducted, highlighted in the records before this Court requires something more than that. The learned Court below has taken cognizance of the matter. More so, it is well entrenched law that once a challan has been submitted in the Court of law without there being any exceptional and demanding circumstance the Courts in the exercise of powers under Section 482 Cr.P.C needs to be slow in ordering fresh investigation and instead of taking the aid of Section 482 Cr.P.C it would have been sufficient enough for the petitioner to go before the Court for trial where the prosecution is pending and claiming redressal of its grievance, if any, if fresh evidence comes on record or further investigation under Section 173(8) Cr.P.C is necessitated the Police can do so as well. It would not be futile to observe here that even

after submission of report under Section 173(2) Cr.P.C the Police still has right to further investigation in terms of Section 173(8) Cr.P.C. Thus, at this juncture it would be preposterous to come to the aid of the petitioners for such a purpose as has sought to be prayed for in the present petition and which too is the purpose of the ratio laid down in **K.V. Rajendran vs. Superintendent of Police, CBCID South Zone, Chennai and others** **2013(12) SCC 480; Jagjit Singh Chahal vs. State of Punjab; others** **2015(4) RCR (Criminal) 834** and **Sakiri Vasu vs. State of UP and others** **2008(1) RCR (Criminal) 392 this Court** cited by the learned State counsel to hammer home the point that it is only as a rarity that such constitutional Courts if satisfied with the accusation against the person by virtue of his influence be it political or by virtue of his own act influence the investigation and prejudice the case of the complainant such powers could be reenforced. Since apparently there is neither any deviation from course of justice brought to the notice of this Court or failure of the investigation agency to perform its duty, thus, not much can be sought for by the petitioners through this invocation. Thus, the petition being hopelessly without any merits stands dismissed.

(FATEH DEEP SINGH)
JUDGE

December 23, 2016

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/Nom