

IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CRM-M-44452-2014 (O&M)

Date of Decision: February 27, 2016

Pushpa Devi

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Arvind Singh, Advocate,
for the petitioner.

Mr. K.S. Pannu, DAG, Punjab.

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| 1. | <i>Whether Reporters of local papers may be allowed to see the judgment?</i> | YES |
| 2. | <i>To be referred to the Reporters or not?</i> | YES |
| 3. | <i>Whether the judgment should be reported in the Digest?</i> | YES |

NARESH KUMAR SANGHI, J. (Oral)

1. Prayer in the present petition, filed under Section 482, Cr.P.C., is for issuance of a direction to respondent Nos. 1 to 3 to transfer the investigation of FIR No. 105, dated 23.8.2013, for the offences punishable under Sections 201 and 302, IPC, registered at Police Station, Mukerian, District Hoshiarpur, to the

Central Bureau of Investigation (respondent No. 4) or any other independent agency as respondent Nos. 1 to 3 had failed to investigate the matter and arrest the accused.

2. Learned counsel for the petitioner contends that Ravinder Minhas, husband of the petitioner, Pushpa Devi, was an Ex-serviceman. He was running a shop in his village, Jhingla. On 22.8.2013, at about 8:30 to 9:00 p.m., while he was coming to his house after closing his shop, then some unidentified persons killed him and threw his dead body into a canal near Power House No. 4. The personal belongings, i.e. mobile phone and cash etc. of Ravinder Minhas were found missing.

3. The matter was reported to the police, on the basis of which FIR No. 105, dated 23.8.2013, for the offence punishable under Section 364, IPC, was registered at Police Station, Mukerian. Respondent Nos. 1 to 3 did not investigate the matter in a scientific manner and, as such, the culprits could not be trapped. He further submitted that the petitioner had disclosed the names of Ankush, Raka and Daljit, residents of village Pandori, but the investigating agency failed to take action against them. The petitioner and her relatives met the higher police authorities, but no proper action was initiated against the culprits. It was also submitted that initially the Punjab State

Human Rights Commission, Chandigarh, took cognizance of the complaint filed by the petitioner, but later on the basis of the affidavit of the Senior Superintendent of Police, Moga, filed the complaint. The petitioner had even approached the Hon'ble President and Hon'ble Prime Minister of India, despite that no action was taken against the culprits. He further submitted that despite presenting several representations, respondent Nos. 1 to 3 have failed to carry out the proper investigation in the present case. He submitted that the matter be transferred to the Central Bureau of Investigation. In support of his contentions, learned counsel has placed reliance on the judgment of Hon'ble the Supreme in the matter of **Sakiri Vasu v. State of U.P. and others, 2008 (2) SCC 409.**

4. On the other hand, learned counsel for the State on instructions from ASI Bhupinder Singh of Police Station, Mukerian, District Hoshiarpur, submits that after completion of the investigation, un-traced report has been presented on 19.2.2016, before learned Area Judicial Magistrate and, as such, if so advised, the petitioner may take recourse before the said Court. While placing reliance on **Sakiri Vasu's case (supra)**, he submits that in the said judgment also Hon'ble the Supreme Court has ruled that after filing of the report under Section 173,

Cr.P.C., the Magistrate concerned can order for further investigation, if the facts so warrants.

5. I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

6. There is no gain saying that while exercising the jurisdiction under Section 482, Cr.P.C., and taking into consideration the peculiar facts and circumstances of the case, this Court can transfer the investigation from one investigating agency to another; supervise the investigation; and even direct the further investigation from the same investigating agency. But such powers have to be exercised in exceptional cases. Once the remedies are available as per the provisions enshrined in the Criminal Procedure Code, then it is expected that the petitioner would approach this Court under Section 482, Cr.P.C, as a last resort after exhausting the remedies available as per law.

7. In the matter of **Sakiri Vasu (supra)**, it was held that no one could insist that an offence be investigated by a particular agency. It was also held that if the police after registration of the case was not conducting proper investigation, then the aggrieved person could approach the Magistrate under

Section 156(3), Cr.P.C., and the said Magistrate would ensure proper investigation. Hon'ble the Supreme Court has gone to the extent that the Magistrate concerned could even monitor the investigation.

8. It is the settled law that after filing of the report under Section 173, Cr.P.C., learned Judicial Magistrate shall have the following options:-

- i) To take cognizance of the offences;
- ii) To refer the matter to the police for further investigation; and
- iii) If the prayer is for cancellation of the FIR or un-traced report has been filed, then to accept the same after issuing notice to the informant.

9. Admittedly, the un-traced report has been presented before learned Area Judicial Magistrate in the present case.

10. The reply filed by way of affidavit on behalf of respondent Nos. 1 to 3 would reveal that Ankush, Raka and Daljit, i.e. the persons whose names were disclosed by the petitioner as culprits, were interrogated and nothing incriminating against them had emerged on record. The assertion of the petitioner that they were not arrested, by itself would not be a ground to transfer the investigation. To arrest a

person for a cognizable offence is the prerogative of the investigating agency. On the whims of the aggrieved/informant, an innocent person cannot be arrested.

11. Since the matter has been investigated and nothing has emerged on record against the persons nominated by the petitioner as culprits and, hence, the un-traced report has been presented before learned Area Judicial Magistrate. This Court finds no good ground to transfer the investigation at this stage. If so advised, the petitioner may appear before learned Area Judicial Magistrate for redressal of her grievance, in accordance with law.

12. Dismissed.

(NARESH KUMAR SANGHI)
JUDGE

February 27, 2016
Pkapoor