

In the High Court of Punjab and Haryana at Chandigarh.

CWP No. 25219 of 2015
Decided on 22.3.2016

Ranbir Singh

--Petitioner

Vs.

State of Haryana and others

--Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.K.S.Sidhu, Sr. Advocate with
Mr.A.S.Sandhu, Advocate, for the petitioner

Mr. Deepak Sabharwal, Addl.A.G, Haryana

Ms.Diya Sodhi, Advocate, for respondent No.6

Mr.J.S.Bedi, Sr. Advocate, with Mr.Gurbir Dhillon, Advocate,
for the complainant in FIR No.182 of 2008.

Rakesh Kumar Jain, J: (Oral)

One FIR No.182 dated 23.4.2008, under Sections 302,/307/
120-B IPC and Section 25/54/59 of the Arms Act was registered by Ram
Kumar Kalyan at Police Station, Civil Lines Karnal against Saramveer
Singh (since deceased) son of Ranbir Singh, (petitioner), petitioner Ranbir
Singh son of Late Nek Ram, his daughter Renuka Kalyan and wife
Shakuntla. Ranbir Singh, the accused in the aforesaid FIR and a
practising Advocate at Karnal, sent an application dated 12.1.2010 to the

then Administrative Judge of Karnal Sessions Division, stating that the complainant Ram Kumar Kalyan had removed the statements recorded under Section 161 of Cr.P.C and also some other documents from the police file. The matter was taken up by this Court on its own motion by way of CWP No. 1100 of 2011 (O&M) on 18.4.2012 and the following order was passed:-

“The findings recorded by the District & Sessions Judge in his report dated 2.3.2010 stare in the face. The Superintendent of Police, Karnal in his affidavit has taken a contrary stand in respect of tempering of police file/disappearance of important documents. We have heard learned counsel for the parties and after perusing the paper book we feel that it is a fit case which needs thorough investigation by a Special Investigation Team of high ranking police officers. Accordingly, we direct the respondent State of Haryana through its Director General of Police to constitute a Special Investigation Team in the overall supervision of Sh.V.Kamraja, IPS, Inspector General of Police. The team shall be comprised of Shri Hitesh Yadav, Deputy Superintendent of Police, Faridabad, Sh. Ashok Bishnoi, Deputy Superintendent of Police, Crime Branch, Madhuban Karnal and Shri Sheetal KJangra, Deputy Superintendent of Police, office of Director General, Panchkula. The Special Investigation Team shall go into the whole gamut of disappearance of documents from the police file. The needful shall be done within a period of three months from the date of receipt of a copy of this order. The action be taken on the report of the Special Investigation Team in accordance with the findings recorded by it. A copy of the report of the Special Investigation Team shall also be placed on the record of this case”.

The Special Investigation Team submitted its following enquiry report:-

A) During the course of enquiry we also observed the following lapses in the investigation of case FIR No.182 of 2008 PS Civil Lines, Karnal for which further investigation under Section 173 (8) of Cr.P.C, is required:-

i) Zimnis were written in a single day using the same pen. The inference drawn from the above is that the investigation has not been done

in a natural course of action and hence, it creates lot of doubts regarding the tampering of records.

ii) Even though the PCR team reached the scene of occurrence within no time, followed by the other senior officers including the FSL team, surprisingly, the scene of crime had not been photographed or video-graphed as in other cases of the similar nature.

iii) It is also glaring evident that the FSL team failed to conduct the Nitrate Test immediately to ascertain; whether Mr.Ram Kumar Kalyan was involved in the firing incident or not.

iv) Strangely, this test (Nitrate Test) was done subsequently on the second day of the incident and thereby losing the evidence which could have proved very crucial to the place as to whether Mr.Ram Kumar was involved or not. This is totally uncommon the conduct the test while he was very much present scene of crime. This act of police team is not above board.

vii) From the above, it is clear that someone other than the deceased is involved in this case. Who that someone is, is a question that investigation has not clearly answered.

x) That the Investigating Officer had not visited the house of Ranbir Singh, to ascertain whether the weapon was actually taken Sharamveer without the knowledge of Ranbir Singh or whether his Almirah was broken into as reported by State Crime Branch in their investigation. This is something that should be done within no time of the happening of the incident.

xi) That from the perusal of the file we observe that affidavits of Ram Kumar, Omlata Kalya and Renuka were taken into possession by Sh. Harbans Lal and Ishwar Sharma, SI during investigation of this case and were removed from the police file. The relevant ziminis and statements of witnesses recorded under Section 161 Cr.P.C on the lines of above affidavits were also removed from the police files:

The Special Investigation Team also made the following recommendations:-

“In order to ascertain the reasons mentioned in the enquiry report as above the SIT recommends,

i) Further investigation under Section 173 (8) of Cr.P.C. Of case FIR No.182 of 2008 PS Civil Lines, Karnal.

ii) Registration of a criminal case under relevant provisions of law for the disappearance of documents from police file and investigate.

iii) Suitable departmental action against the erring police officers who have failed to perform their duties as expected of them”.

Learned senior counsel for the petitioner has submitted that an untraced report in FIR No.182 of 2008 was submitted to the Ilqa Magistrate on 13.7.2010 which was accepted on 11.2.2012. It is alleged that the said order was challenged by one Om Lata Kalyan before the Sessions Court, Karnal but it was dismissed on 30.7.2013 and the said order has attained finality.

It is further submitted that the petitioner's daughter Renuka, who was also injured in the incident, had also filed a complaint against Ram Kumar and Omlata Kalyan in which the Addl.Sessions Judge, Karnal, convicted Ram Kumar Kalyan for life sentence and acquitted Om Lata Kalyan, vide order dated 09.5.2014.

It is also a matter of fact that Ram Kumar Kalyan has challenged his conviction by way of Criminal Appeal No.922-DB of 2014, whereas the complainant Renuka has challenged the order of acquittal of Omlata Kalyan, by way of Criminal Appeal No. 1151-MA of 2014. Both the aforesaid appeals have now been admitted and are still pending.

Besides the aforesaid facts, it is also mentioned that on the basis of recommendations of SIT for further investigation under Section 173 (8) of Cr.P.C, Ilqa Magistrate, Karnal passed an order of further investigation on 21.3.2015. The said order was unsuccessfully challenged

by Renuka by way of Criminal Revision before the Sessions Court, Karnal and now the Criminal Misc No.26269 of 2015 titled Renuka V. State of Haryana and others has been filed which is pending for hearing on 07.5.2016. it is also mentioned that no notice has been issued in the said case.

In the background of the aforesaid facts and circumstances of the case, learned counsel for the petitioner has submitted that he has no objection against the other two recommendations made by the SIT, namely, registration of a criminal case in regard to disappearance of documents from police file and investigation and suitable departmental action against the erring police officers.

The only grievance of the petitioner is against the first recommendation in which further investigation under Section 173 (8) of Cr.P.C was ordered. It is submitted by learned counsel for the petitioner that the said recommendation is contrary to the order passed by the Division Bench of this Court on 18.4.2012 and the SIT was constituted only to go into the whole gamut of disappearance of documents from the police file. He has thus vehemently argued that the proceedings initiated in terms of the first recommendation issued by the SIT at the instance of Ilaka Magistrate, Karnal, is contrary to the direction issued by this Court and the said proceedings are liable to be set aside at this stage.

On the other hand, learned counsel for the State has submitted that insofar as recommendations No. ii. and iii. are concerned, FIR No.96 of 2014 under Sections 406/420 IPC has been registered against Inspector Harbans Singh and SI Ishwar, at Police Station, Civil Lines, Karnal and suitable departmental action has also been ordered to be taken against those

two police officers.

It is also submitted by the learned State Counsel that the petitioner has taken two remedies at the same time because the petitioner has also challenged the order of the Magistrate by way of filing a quashing petition before this Court in which no proceedings have taken place so far. It is also submitted that the SIT had only recommended further investigation and it was for the Magistrate to see as to whether it is a case worth ordering further investigation or not ?.

Thus, at this stage, challenge to the recommendation of the SIT is uncalled for specially when the petitioner has lost in his efforts before the Sessions Court, Karnal to challenge the order dated 21.3.2015 passed by the Magistrate.

Mr. J.S.Bedi, learned senior counsel has also filed an application to intervene in this petition on behalf of the complainant in FIR No.182 of 2008 and wanted to bring to the notice of the Court the actual facts. The request has been strongly opposed by the learned counsel for the petitioner, but keeping in view the facts and circumstances of the case, I have permitted Mr.Bedi to make submissions on behalf of the complainant.

Mr. Bedi has submitted that on the one hand, the petitioner is pursuing the petition and on the other hand, he is not appearing before the Investigating Officer in the matter for further investigation ordered by the Magistrate and even the respondent/State has also filed an application for obtaining order of arrest of the petitioner and the said application is pending for adjudication for 08.4. 2016 before C.J,M, Karnal.

Mr. Bedi has further submitted that the petitioner has no right to obstruct at this stage in the recommendation of the SIT much less for

further investigation ordered by the Magistrate.

In reply, the petitioner has submitted that allegation against him that he is not cooperating with the investigation is totally not correct because he has filed reply to the notice issued by the Investigating Officer and his brother-in-law has not been allowed to join the investigation.

I have heard learned counsel for the parties and perused the available record.

To cut short the lengthy story, it would be appropriate to mention that grievance of the petitioner raised in this petition is only regarding the first recommendation of the SIT. It is not disputed that the SIT has made the recommendation but it was for the Ilqa Magistrate to accept or not the recommendation, who has admittedly accepted the recommendation and issued direction of further investigation under Section 173 (8) of Cr.P.C vide order dated 21.3.2015 which was challenged by the petitioner's daughter before the Sessions Court, Karnal. The revision petition was dismissed and the said petitioner is before this Court in Criminal Misc No.26269 of 2015, filed under Section 482 of Cr.,P.C titled Renuka Vs. State of Haryana and others, which is now fixed for 07.4.2016.

Since the matter is sub judice before this Court and the order has been passed by the competent Court on 21.3.2015 taking cognizance for the purpose of further investigation under Section 173 (8) of Cr.P.C, may be on the basis of recommendation of the SIT, the said recommendation has merged in to the order of the Magistrate passed on 21.3.2015 and unless and until, the said order is set aside by the competent Court, no relief can be granted to the petitioner.

Consequently, in view of the fact that since the cognizance has

already been taken ordering further investigation under Section 173 (8) of Cr.P.C, this petition is not maintainable and is liable to be dismissed as infructuous.

In view of my aforesaid discussion, I do not find any merit in this petition and the same is hereby dismissed as infructuous.

Any observations made in this petition shall have no bearing on Criminal Misc. No.26269 of 2015 titled Renuka Vs. State of Haryana and others.

22.3.2016
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(Rakesh Kumar Jain)
Judge